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OF THE

# DEBATES OF CONGRESS,

FROM 1789 TO 1856.

FROM GALES AND SEATON'S ANNALS OF CONGRESS; FROM THEIR  
REGISTER OF DEBATES; AND FROM THE OFFICIAL  
REPORTED DEBATES, BY JOHN C. RIVES.

BY

THE AUTHOR OF THE THIRTY YEARS' VIEW.

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# EIGHTEENTH CONGRESS.—FIRST SESSION.

## PROCEEDINGS AND DEBATES

IX

### THE HOUSE OF REPRESENTATIVES.

CONTINUED FROM VOL. VII.

THURSDAY, April 15, 1824.

#### *Occupation of Columbia River.*

Mr. FLOYD, from the committee appointed on the 29th of December last, to inquire into the expediency of occupying the mouth of the Oregon or Columbia River; made a report thereon, which was read, and laid on the table. The report is as follows:

The committee to which was referred the resolution of the 29th day of December last, instructing them to inquire into the expediency of occupying the mouth of the Oregon or Columbia River, have had the same under consideration, and ask leave further to report: That they have considered the subject referred to them, and are persuaded, that, both in a military and commercial point of view, the occupation of that Territory is of great importance to the Republic; but, as much has been submitted to the House on these points, by former committees, they have now deemed it necessary only to present a view of the difficulties which would probably present themselves in accomplishing that object, and the manner in which they can be overcome.

To obtain information, a letter to this end was addressed to an officer of the Army, whose integrity in the public service is well known to the House, and whose military knowledge is entitled to the highest respect; that officer, Brigadier General Thomas S. Jesup, answered so satisfactorily to the committee, that they have presented the answer, in its entire form, to the House, and adopt it as a part of this report.

QUARTERMASTER GENERAL'S OFFICE,  
Washington, April 26, 1824.

SIR: In reply to your letter, dated the 30th ultimo, requesting me to communicate "any facts, views, or opinions, which may have presented themselves to me, relative to the probable difficulty of making an establishment at the mouth of Columbia River, and the military advantages of that establishment," I have the honor to remark, that, ever since my attention was first directed to the subject, I have considered the possession and military command of the Columbia necessary not only to the protection of the trade, but to the security of our Western frontier. That flank of our country, extending from the Lakes to the Gulf of Mexico, is everywhere in contact with numerous, powerful, and warlike Indian nations; who, alto-

gether, might be able to bring into the field, from twenty to thirty thousand warriors. Most of those nations communicate, either with the British to the north and west, or the Spaniards to the south. In the event of war, that force, with a few hundred foreign troops, or under the influence of foreign companies, might be made more formidable to us than any force which Europe combined could oppose to us. On the other hand, if such measures be adopted as to secure a proper influence over them, and, in the event of war, to command their co-operation, they, with the aid of a few small garrisons, would not only afford ample protection for that entire line, but would become the scourge of our enemies.

The dangers to be apprehended, can only be averted by proper military establishments; and whether the post at the mouth of Columbia be intended to secure our territory, protect our traders, or to cut off all communication between the Indians and foreigners, I should consider a line of posts extending from the Council Bluffs entirely across the continent necessary. Those posts should be situated, as well with a view to command the avenues through which the Indians pass from the north to the south, as to keep open communication with the establishment at the mouth of the Columbia.

A post should be established at the Mandan villages, because, there the Missouri approaches within a short distance of the British territory, and it would have the effect of holding in check the Hudson's Bay and Northwest Companies, and controlling the Rickarees, Mandans, Minnatarees, Assiniboins, and other Indians, who either reside or range on the territory east, north, and west of that point.

A post at, or near, the head of navigation on the Missouri, would control the Blackfoot Indians, protect our traders, enable us to remove those of the British companies from our territory, and serve as a depot, at which detachments moved towards the Columbia might either be supplied, or leave such stores as they should find it difficult to carry with them through the mountains. It might also be made a depot of trade, and of the Indian Department.

To keep open the communication through the mountains, there should be at least one small post at some convenient point between the Missouri and the Columbia, and on the latter river and its tributaries there should be at least three posts. They would afford present protection to our traders, and, on the ex-

piration of the privilege granted to British subjects to trade on the waters of the Columbia, would enable us to remove them from our territory, and to secure the whole to our own citizens. They would also enable us to preserve peace among the Indians, and, in the event of foreign war, to command their neutrality or their assistance, as we might think most advisable. The posts designated, might be established and maintained, at an additional annual expense not exceeding forty thousand dollars.

By extending to those posts the system of cultivation, now in operation at the Council Bluffs, the expense of supplying them would, in a few years, be greatly diminished. Mills might be erected at all the posts at a trifling expense, and, the whole country abounding in grass, all the domestic animals necessary, either for labor or subsistence, might be supported. This would render the establishments more secure, and, consequently, more formidable to the Indian nations in their vicinity.

As to the proposed posts on the Columbia, it is believed they might be supplied immediately at a low rate. Wheat may be obtained at New California, at about twenty-five cents per bushel, and beef cattle at three or four dollars each. Salt, in any quantity required, may be had at an island near the Peninsula of California. Should transportation not be readily obtained for those articles, vessels might be constructed by the troops.

To obtain the desired advantages, it is important, not only that we occupy the posts designated, but that we commence our operations without delay. The British companies are wealthy and powerful; their establishments extend from Hudson's Bay and Lake Superior to the Pacific; many of them within our territory. It is not to be supposed they would surrender those advantages without a struggle, and, though they should not engage in hostilities themselves, they might render all the Indians, in that extensive region, hostile.

The detachment intended to occupy the mouth of Columbia might leave the Council Bluffs in June, and one hundred and fifty men proceed with the boats and stores; and, as the country is open, and abounds with grass, the remaining fifty might proceed by land, with the horses intended for the transportation across the mountains, and might drive three or four hundred beeves to the Mandan villages or to the falls of Missouri; at one of those places the parties should unite and spend the winter. The latter would be preferable, because there they might be able to establish a friendly intercourse with the Blackfoot Indians, or, at all events, by impressing them with an idea of the power of the nation, restrain their depredations upon the neighboring tribes, and deter them from acts of outrage upon our traders. They might, also, during the winter, reconnoitre the several passes through the mountains, prepare provisions necessary to support them on the march, and down the Columbia; and, if authorized to do so, remove from our territories all British traders on the waters of the Missouri. They would necessarily remain at, or in the vicinity of, their wintering ground, until June, but might be occupied during the months of April and May, in opening a road to the mountains, and constructing bridges over the numerous streams on the route. This work performed, they might, in about twenty days, reach the navigable waters of Clark's River, a branch of the Columbia, and, in ten days more, prepare transportation to descend to their des-

tination, where, after every necessary allowance for accidents and delays, they would certainly arrive by the month of August.

The vessels employed to transport the stores by sea, might leave the United States in the month of November, and would arrive at the mouth of Columbia in April, at least four months before the detachment from the Council Bluffs could reach that point; and, unless the ships should be detained during that time, which could not be expected, the stores would be exposed to damage and depredation, and perhaps, by the time the troops should arrive, would be entirely destroyed. It would, therefore, seem to be a measure of prudence, that at least one company of artillery be transported with the stores. That description of force would be found necessary at the post, and the ships would afford them ample accommodation.

That the route from the Council Bluffs to the mouth of Columbia is practicable, has been proved by the enterprise of more than one of our citizens. It, no doubt, presents difficulties; but difficulties are not impossibilities. We have only to refer to the pages of our history to learn that many operations, infinitely more arduous, have been accomplished by Americans. The march of Arnold to Quebec, or of General Clark to Vincennes, during the Revolutionary war, exceeded greatly in fatigue, privation, difficulty, and danger, the proposed operation; and I believe I may say without fear of contradiction, that the detachment might be supplied, during the whole route, with less difficulty than in the war of 1756 was experienced in supplying the forces operating under General Washington, and General Braddock, against the French and Indians, on the Ohio.

A post at the mouth of Columbia is important, not only in relation to the interior trade, and the military defence of the western section of the Union, but, also, in relation to the naval power of the nation. Naval power consists, not in ships, but in seamen; and, to be efficient, the force must always be available. The northwest coast of America is an admirable nursery for seamen—many of our best sailors are formed there; without a naval station, however, on the Pacific, the force employed in the whale fishery, as well as in sealing, and the northwest trade, would, in the event of war with a great maritime power, be, in some measure, lost to the nation. But, that establishment made, it would afford a secure retreat to all our ships and seamen in that section of the globe; and the force, thus concentrated, might be used with effect against the trade, if not the fleets or possessions of the enemy, in place of being driven to the Atlantic, or perhaps captured on their way.

The establishment might be considered as a great bastion, commanding the whole line of coast to the North and South; and it would have the same influence on that line which the bastions of a work have on its curtains; for the principles of defence are the same, whether applied to a small fortress, or to a line of frontier, or even an entire section of the globe. In the one case, the missiles used are bullets and cannon shot; in the other, ships and fleets.

I have the honor to be, &c., TH. S. JESUP.

Hon. J. FLOYD, *House of Representatives.*

#### *Indian Reservations in Georgia.*

Mr. FORSYTH, from the select committee to which was referred the President's Message of the 30th of March, 1824, relating to the execution of so much of the compact of 1802 between

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the United States and the State of Georgia, as relates to the extinguishment of the Indian title to lands within that State; also, a memorial of the Legislature of the said State; made a report thereon; which was read, as follows:

The select committee, to whom was referred the President's Message, of the 30th of March, with the documents accompanying it, relating to the compact of 1802, between the United States and the State of Georgia, submit to the House, on that Message, and on the memorial of the Legislature of the State of Georgia, also referred to them, the following report:

The State of Georgia claimed, on the establishment of the independence of the United States, all the lands now forming the States of Georgia, Alabama, and Mississippi, with the exception of those portions of the two last States which formed a part of Florida and Louisiana.

This claim was founded upon the charter of incorporation of the proprietary government; on the Royal commissions issued to the Governors of the State, after the proprietors had surrendered their charter to the Crown. The claim was disputed by South Carolina and by the United States. The conflicting claims of South Carolina and Georgia were adjusted by a convention between them, in 1787. The United States recognized, by the treaty with Spain of the year 1795, the claim of Georgia, having refused, in 1788, a cession from the State, on account of the remoteness of the lands, and of the terms proposed by Georgia.

In April, 1798, Congress passed a law in relation to the western part of the territory of Georgia, with a reservation of the rights of Georgia to the jurisdiction and soil.

In May, 1800, another act was passed, containing a similar reservation.

In December, 1800, Georgia remonstrated against these acts, as a violation of her right of sovereignty and soil. The compact of 1802 put an end to the disputes which were likely to arise out of this collision between the General and State Governments. By this compact, the United States obtained a surrender of the right of Georgia to the sovereignty and soil of two States, containing, by estimate, eighty-six millions of acres of land, for the paltry consideration of the payment of \$1,280,000 out of the proceeds of that land, and of a promise to extinguish the Indian title to the land within the territorial limits not ceded to the United States, as soon as it could be done peaceably, and on reasonable terms. The execution of this compact produced no change in the right of Georgia to the sovereignty and soil of the land within her newly-defined boundaries. Its only effect was to throw upon the United States the expense which might attend the extinguishment of the Indian title, an expense which, but for this compact, must have been borne by the State. Nor did this compact, in the slightest circumstance, add to the title of the Indians; it recognized only the claim which they, as Indians, were allowed to have, according to the usages of the States, and the liberal policy adopted towards them by the General Government.

In relation to the Cherokees, the principal topic of the President's Message, it would appear that new doctrines are permitted to be entertained of them, in the opinion of the committee neither consistent with the opinions heretofore entertained, with

the practices of the Government, nor with the interests of the Union. The Cherokees claim to be an independent tribe. The President avows the belief that the articles of the cession of 1802 is a full proof that the Indians had a right to the territory, in the disposal of which they were to be regarded as free agents.

The acts of the General Government, in 1814, in relation to the Creeks; the language of the President of the United States, in 1817; the language of the Secretary of War, in 1818; of the agent of the Government in that year, in treating with the Cherokees; of the agent treating with them in 1828, does not correspond with the opinions now expressed.

In 1814, General Jackson, acting under the authority of the Government, took from the Creek Indians, for an equivalent named by himself, all the land the United States chose to require, to effect a great object of national policy in regard to Indian tribes. It cannot be alleged that this was done by virtue of conquest. The letter of the late Indian agent, Colonel Hawkins, of the 11th of August, 1815, laid before the House of Representatives on the 5th of April, 1824, shows that nearly eight millions of acres were taken from the friendly Indians, (our allies in the war,) over and above all the hunting grounds of the upper friendly Creeks, for what was called an equivalent, but which the Indians did not deem such.

In 1817, in his Message at the opening of Congress, the President says, "the hunter state can exist only in the vast uncultivated desert. It yields to the more dense and compact form, and greater force of civilized population; and, of right, it ought to yield, for the earth was given to mankind to support the greatest number of which it was capable, and no tribe or people have a right to withhold, from the wants of others, more than is necessary for their own support and comfort."

In a letter of the 29th of July, 1818, the Secretary of War says to Mr. McMinn, speaking of the attempts to prevent the Cherokees from going to Arkansas, "The United States will not permit the treaty to be defeated by such means. Those who choose to remain are permitted to do so in quiet—those who choose to emigrate, must be equally free." And further: "It is vain for the Cherokees to hold the high tone which they do, as to their independence as a nation, for daily proof is exhibited that, were it not for the protecting arm of the United States, they would become the victims of fraud and violence." Mr. McMinn tells the Cherokees, in conformity with this declaration, in his talk to the chiefs, of the 28d of November, 1818, "It must surely be, my brothers, that you view me as an impostor, acting upon my own authority, with a view to deceive the nation, or that you flatter yourselves with the empty expectation that the United States cannot execute a measure of general defence for the safety of her citizens, which shall, in the slightest degree, affect your interest or your wishes." The agents of 1823 assert an unqualified right in the United States to take from the Indians any of their lands for public use. It is asserted, however, by the Secretary of War, that there were treaties existing with the Cherokees, in 1802, which guaranteed their lands. These guarantees were only of the Indian title, as understood by all at the date of the execution of these treaties—a title of mere occupancy, for the purposes of hunting.

The idea of title to the soil was, until lately, unknown to the Indians. Their lands were overrun by them, not inhabited; their rights not transferred, but extinguished, dependent upon the will of the power to whom the sovereignty over them belongs. This sovereign power was Georgia, prior to the adoption of the Constitution of the United States. That constitution gave to the United States the authority to manage the affairs of the Indians, for the peace of the Union, and the eventual benefit of Georgia. The Indians had mere occupation; the United States were the agents of Georgia for the extinguishment of this allowed possession. The compact of 1802 required this to be effected out of the general fund. No act of the United States, nor of the Indians, nor of both, could, without her consent, impair the rights of Georgia to the jurisdiction and soil of the territory in question, whenever the Indians should be removed from it, by accident, by contract, or by force. This doctrine is confirmed by the decision of the Supreme Court of the United States, which has declared sales made by States, of Indian territory, valid, prior to the extinguishment of Indian title: That there is a species of seisin in fee, which enables a State to grant to individuals. In fact, the compact of 1802 is the acknowledgment of the United States of this doctrine, as their only title to the soil of Alabama and Mississippi is founded upon it. The Secretary of War, in his attention to the treaties guaranteeing the Indian title, has entirely omitted to notice the first and most important document in relation to this subject, the Treaty of Hopewell, of 1786—a document sustaining the opinion of the committee, and giving to it, what is now deemed important, the sanction of Indian acquiescence. The fourth article of the Treaty of Hopewell, is, “the boundary allotted to the Cherokees for their hunting grounds, is, and shall be, the following:” The Indians acknowledge, by that treaty, the United States as their sovereign; and, by the 9th article, Congress assumes, for the interest and comfort of the Indians, the power to regulate their trade, and manage all their affairs as they may deem proper. This treaty existed at the adoption of the Constitution of the United States, and Georgia, as a member of the Union, was vested with the sovereignty and soil of the Cherokee lands, subject only to the Indian right of hunting within the allotted limits, which right, the General Government was bound to extinguish as early as the general convenience would permit.

The duty of the General Government was to do all acts which would accelerate this event; to refrain from all acts which would retard it. Over the territories of the United States, the General Government could rightfully exercise unlimited power, in relation to the Indian tribes. Within a particular State, the sole power was that of agency, for the preservation of peace, the regulation of trade, and the extinguishment of title. To this general obligation, imposed by the constitution on all the States, a special promise was added in favor of Georgia, in 1802; partially executed; but, to the complete execution of which, difficulties are alleged to exist, which require the interposition of the power of Congress.

How far this promise has been complied with, is attempted to be shown by two documents, marked A and B, sent to Congress by the President. By the document A, it appears that the Indian title to 15,744,000 acres has been extinguished; and that there remains 10,240,000 acres yet in their possession, as hunting grounds. The first quantity is alleged to be

all that could be peaceably obtained on reasonable terms.

The document No. 1, accompanying this report, will show that, since 1802, the United States have been able to obtain, for their own use, more than 80,000,000 of acres in Alabama and Mississippi, in addition to 7,638,400 obtained in 1801; to 5,006,890 obtained for Tennessee, by treaty, from the Chickasaw Indians, subsequently confirmed by a treaty with the Cherokees; 700,000 for North Carolina; and a quantity, an estimate of which is not in the hands of the committee, for South Carolina. No satisfactory explanation is afforded to show how this difference in the quantity of lands procured by the United States, for their own account, and in compliance with their promise to Georgia, has occurred.

The document B is intended to show the expense incurred in the execution of the compact of 1802. It is defective and delusive. It contains no credit for the money received at the treasury of Georgia, viz: the Yazoo fund, \$184,515 94. It is omitted to be stated that the \$1,250,000 was paid out of the proceeds of the property acquired. It charges the Yazoo compromise as a benefit to Georgia, who had no interest in the settlement but a common interest with the other States. The land procured for the Cherokees, on the Arkansas, is charged at the minimum value of lands surveyed and offered for sale by the United States, and not at its trifling actual cost, about twenty-five thousand dollars.

The committee are at a loss to know what bearing this defective document has on the question of the Cherokee lands. As, however, they presume it has a relation not well understood, they conceive it proper to show, by the statement No. 2, what pecuniary advantages have accrued, and will accrue, to the United States, under the compact with Georgia. By this statement, it appears that \$4,512,850 28, exclusive of Mississippi stock, have been received into the public Treasury; that \$6,444,821 51 are due from sales made; that the land ceded by the Indians, and not yet sold, is 27,588 800 acres, which, at the minimum price, is \$34,486,000. That there remains yet, as hunting grounds for the Indians, 22,977,576 acres.

The balance of profit is sufficiently with the United States to justify contracts for the extinguishment of Indian title for the benefit of Georgia, without great scrutiny as to the amount of expense incurred. The committee agree with the Secretary of War, “that no opportunity of extinguishing the Indian title, on reasonable terms, has been neglected by the General Government,” for its own use; but they do not perceive that the same zeal has been successfully exerted for the State of Georgia. The treaty of 1814, with the Creeks, was dictated by General Jackson to the Creeks, by order of the Department of War. As has been already seen, a large territory was taken from the Creeks.

The policy of the United States, as explained by the Secretary, required a separation of the tribes of Indians from each other, and from the ocean. To this policy a compliance with the promise to Georgia was sacrificed. It is alleged that the obligation to Georgia extends only to the purchase of lands, &c. The term purchase is an interpolation; it is not found in the articles of cession of 1802. It is alleged, also, that this land was obtained by conquest, and therefore the nation was at liberty, laying the contract with Georgia out of view, to pursue its plan of policy. Without entering into any considerations to show that the United States, having obtained, by force not

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used for that purpose, but defensively, the opportunity to extinguish the Indian title within the limits of Georgia, was bound, in good faith, to use it, it is deemed sufficient to refer the House to the facts, disclosed by the extract from Colonel Hawkins's letter, already quoted, that this acquisition by conquest was an acquisition of lands from friends and allies, for an equivalent named by the United States.

The propriety of accommodating the State of Georgia was suggested to the commissioner of the United States by the Indian agent; but the answer was, that the instructions of the Government would not permit a compliance with this suggestion. The committee are of opinion that an acquisition of land to Georgia, to any extent, could have been obtained from the Creeks in 1814. The attention of Congress has been called to the arrangements made with the Cherokees in 1817 and 1819. The arrangement of 1817 was for the purpose of carrying into effect the wishes of the Cherokees, as declared to Mr. Jefferson in 1808, by a deputation from the upper and lower towns. According to the preamble of the arrangement of 1817, the upper towns desired to remain fixed above the Hiwassee River, to contract their society within narrow limits, and begin the establishment of fixed laws and a regular government. The lower towns desired to continue the hunter life, and for that purpose wished to remove across the Mississippi. The wishes of the upper and lower towns were granted, and arrangements made for the removal of the latter across the Mississippi. No line was drawn between the upper and lower towns, although a request was made of the Indians that it should be done by the United States. The arrangement of 1817 provides for the fulfilment of the wishes expressed in 1808, and the promises of the Government of 1809. The wishes of the lower towns was a removal beyond the Mississippi, of the upper, a contraction of their society within narrower limits. By the 8d and 4th articles, it was agreed that a census should be taken of the population beyond the Mississippi, and of those who chose to emigrate thither; and a census of those who chose to remain in their present location. The territory occupied by them on this side of the Mississippi was to be divided according to the relative numbers of those who had migrated, and would migrate, to the remainder; and that portion which fell to the migrators was to be received by the United States in place of the lands furnished to the Cherokees beyond the Mississippi. From this plan, the extinguishment of the title of the Cherokee Indians was anticipated, and would have taken place had it been executed in its spirit by the General Government. It appears, however, that the census was never taken, and that, in 1819, a deputation of Cherokees was permitted to come to Washington to adjust, finally, the difficulties arising out of the treaty of 1817. The lower Cherokee towns, in the limits of Georgia, did not remove beyond the Mississippi. Most of the removals took place from the upper towns, out of the limits of Georgia. In place of the proportion of lands to be abandoned, according to the treaty of 1817, a fixed quantity was accepted, a very small and worthless part of which is in Georgia.

It is alleged by the Secretary of War that the desire of Government was, to have a cession in such form as would separate the Creeks and Cherokees; but that it was found impossible to induce the Cherokees to yield to that proposition, or to any other more favorable to Georgia, than that which was adopted. He

does not, however, state that any other was made, with a view to comply with the compact of 1802. The proposition made for the separation of the Creeks and Cherokees, was not for the benefit of Georgia, had it been acceded to, although the interests of the State would have been more advanced than by the actual arrangement; yet, even in that case, the United States would have sacrificed the obligations of the compact to the policy of separating the Indian tribes, and to the consequent acquisition of lands for their own use in the State of Alabama. The committee cannot understand why a cession of the whole quantity of land in Georgia could not have been obtained. The obligations of the Indians was simple—a line, a boundary—and the United States had only to insist upon fixing that boundary, according to the preamble of the arrangement of 1817. The Secretary of War, however, states that the Indians will not yield, and it seems that the United States did yield. It is obvious to the committee that the interest of Georgia was considered a mere secondary object, from the terms of the arrangement of 1819. The preamble to that arrangement is a satisfactory evidence of the entire forgetfulness of the obligations of the compact of 1802.

The treaty is made in consequence of the earnest desire of a great part of the Cherokee nation to remain on this side of the Mississippi, to commence the measures necessary to the civilization and preservation of the nation. The committee are surprised that the occasion was not taken to satisfy the Indians that their continuance in Georgia was impossible, unless Georgia consented to it, and still more so, that the Indians should be encouraged, by this preamble of a treaty, made at the Seat of Government, under the eyes of the President, to entertain that expectation. The treaty of 1817, and that of 1819, show a strange forgetfulness of the limited extent of the power of the United States over the land in question. The Secretary of War, acting under the direction of the Executive Magistrate, and pursuing the example set in 1817, seems to have imagined that the United States and the Indians could do, lawfully, whatever suited their mutual convenience, without regard to the State of Georgia; an error which had been previously committed in treaties with the Creeks. No difference was made between Indian lands within the limits of the State claiming the eventual jurisdiction and soil, and the Indian lands where the soil is the property of the United States. Provisions are made, in both treaties, for vesting individuals with fee simple titles to land, and to convert them, by a short process, into citizens. The right of the United States to do either is absolutely denied by the committee. The General Government can take the property of individuals for public use, but the constitution withholds the power even to prejudice the claims of any State. Congress can establish a uniform rule of naturalization; the Executive Magistrate cannot make, by an Indian treaty, special exceptions to the established rule. The effect of such acts on the part of the General Government was to be anticipated. The Indians were taught the value of separate property, and the advantages to be obtained by a continuance in their present position. The General Government authorized, also, the establishment of missionaries among the Cherokees, to instruct their children, and to give them a taste for the cultivation of the soil. The committee are not informed that the influence acquired by these missionaries has been exerted to induce the

Indians to seek a residence beyond the Mississippi, nor are they informed that the Government has ever thought it necessary to impose upon them such a task. The committee are not to be understood as expressing any disapprobation of the policy of the United States for the civilization of the Indian tribes; they confine themselves to the policy, as it has affected the performance of the promises of the United States, under the compact of 1802. As it relates to that compact, they express their decided conviction that the attempts which have been made to civilize, and permanently fix, the Cherokees in Georgia, is in direct violation of the promise to extinguish their title, as soon as it could be done peaceably, and on reasonable terms; nor do the committee perceive the necessity of holding out the idea of permanent settlement in Georgia, as a prelude to the establishment of a regular government for the Indians. As it regards expense, it would certainly be, for the United States, the cheapest mode of effecting this object, as the cost would be paid by Georgia, and the United States would be saved from the onerous obligation of removing the Indians for the benefit of that State; a saving of expense which, however, the United States will not desire, as it involves a breach of their faith.

From the circumstances thus detailed, the House will not be surprised at the present pretensions of the Cherokees, to be regarded as independent, or their declarations, that they will neither sell nor quit the lands occupied by them. Some surprise cannot but be felt at the acquiescence of the United States in the substitution of diplomatic correspondence for Indian talks, and at the manner in which the subject of the Cherokees is presented to Congress. The Legislature of Georgia, at their last session, sent to the Chief Magistrate a memorial on the subject of the compact of 1802. The President of the United States has not laid that memorial before Congress, but has preferred to present to the Legislative body a correspondence of the Secretary of War with certain Cherokee chiefs, which begins, on their part, by a declaration that they would sell no more land; contains a request that no more appropriations should be made for that purpose; and a suggestion that the United States should, in some other way, satisfy Georgia, as, by a cession in Florida. To the formal answer of the Secretary of War, a rejoinder is given, and, on this rejoinder, Congress are informed that its power must be exerted, as it is obvious that the Executive can do nothing further without the intervention of Congress. The President has given his opinion, that the use of force would be unjust, and that without force nothing can be done. What should be done by Congress, is a subject of the most serious and important concern. The parties to the compact of 1802 anticipated the extinguishment of the Indian title to all the lands in Georgia. The United States agreed to extinguish it, as soon as it could be done peaceably, and on reasonable terms. The compact imposed upon the General Government the obligation to use all the means necessary to accomplish the end in view. It was especially their duty to refrain from doing any thing calculated even to retard, much less to render impracticable, the attainment of that end. If the committee have not deceived themselves, it must be apparent, that the United States have omitted to embrace two occasions, when a fuller performance of the conditions of the compact was in their power. It is equally apparent that the United States have not only omitted to express constantly,

and with firmness, to the Cherokees, the necessity of their ultimate removal from Georgia, but have held out to them the idea of a permanent residence, as citizens, in that State; have taught them the value of their position, and intimated, that it depended upon themselves, to remain or to remove; have attempted to vest, in individuals, a permanent property in the soil. From these causes, every day increasing in their effect upon the inclination of the Cherokees, have arisen the determination of the Cherokees, as made known to the President. It is the policy of the United States which has created the difficulties; if peaceable acquisition is impossible, that impossibility is the work of the General Government.

In this state of things, encountering contradictory obligations, the course for the Government is plain and obvious. Justice should be done to Georgia. The Indian claim should be extinguished, even should force be required for that purpose; or the consent of the State must be obtained to some arrangement, which will free the United States from the embarrassments arising from its regard to the unhappy condition of the Indians, from a respect to the expectations they have erroneously permitted this tribe to entertain, and from their formal and solemn obligation to a member of the Union.

The committee do not, however, believe that any serious difficulty now exists, to the peaceable extinguishment of the Indian title, on reasonable terms. An order from the General Government for their removal, would be cheerfully acquiesced in, if accompanied by the necessary preparation for the prosperity of the tribe, and a just equivalent for the temporary inconveniences they might suffer. The committee agree with the President, that it would promote essentially the security and happiness of the tribes of Indians, if they could be prevailed on to retire beyond the limits of the States; but they cannot see the injustice of any measure, short of actual hostility, which would essentially promote the security and happiness of the Cherokees. There is another consideration which should be brought into view; the only plausible objections to the proposed order, is its injustice, and inhumanity, to the Indians. That it is just to promote their essential security and happiness, even by means not agreeable to their wishes, cannot be denied; that it is humane to preserve them from dangers, to which they will be exposed, by an obstinate adherence to their own opinions, is equally true. Their present position is incompatible with the claims of the State of Georgia; the knowledge of the fact, that the United States will not, in consequence of the perverseness of the Cherokees, comply with the obligations of the compact of 1802, will necessarily produce irritations and resentments, the consequences of which may be easily foreseen. The United States may be under the fatal necessity of seeing the Cherokees annihilated, or of defending them against their own citizens. The committee offer to the House the following resolutions, under a full conviction that the adoption of them will not be followed by any consequences injurious to the Cherokee tribe, or to the character of the General Government for justice and humanity:

*Resolved*, That the United States are bound, by their obligations to Georgia, to take, immediately, the necessary measures for the removal of the Cherokee Indians beyond the limits of that State.

*Resolved*, That such an arrangement with the State of Georgia should be made, as may lead to the final adjustment of the claims of that State, under the

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compact of 1802, with the least possible inconvenience to the Cherokee and Creek Indians, within the boundary of the State.

*Resolved*, That the sum of — dollars should be appropriated for the purposes expressed in the above resolutions.

Mr. FORSYTH moved to refer the report to a Committee of the Whole on the state of the Union.

To this reference, Mr. ALLEN, of Massachusetts, objected, as giving to this subject an undue preference over other business earlier introduced into the House.

In reply to this objection, Mr. FORSYTH said, among other things, that, if gentlemen had examined the documents connected with this report, they would have seen that a state of irritation exists, which requires to be allayed, or it would require something stronger than resolutions of this House to allay it.

The question was then taken on Mr. FORSYTH's motion for a reference, and decided in the affirmative—82 votes to 75.

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The engrossed bill to amend the several acts for imposing duties on imports and tonnage, was then read a third time; and the question being stated, "Shall this bill pass?"

Mr. RANDOLPH, of Virginia, addressed the chair. I am, said he, practising no deception upon myself, much less upon the House, when I say that, if I had consulted my own feelings and inclinations, I should not have troubled the House, exhausted as it is, and as I am, with any further remarks upon this subject. I come to the discharge of this task, not merely with reluctance, but with disgust; jaded, worn down, abraded, I may say, as I am by long attendance upon this body, and continued stretch of the attention upon this subject. I come to it, however, at the suggestion, and in pursuance of the wishes of those whose wishes are for me in all matters touching my public duty, paramount law; I speak with those reservations, of course, which every moral agent must be supposed to make to himself.

It was not more to his surprise than to his disappointment, Mr. R. said, that, on his return to the House, after a necessary absence of a few days, on indispensable business, he found it engaged in discussing the general principle of the bill, when its details were under consideration. If he had expected such a turn in the debate, he would, at any private sacrifice, however great, have remained a spectator and auditor of that discussion. With the exception of the speech, already published, of his worthy colleague on his right, (Mr. P. P. BAXBOUR,) Mr. R. said he was nearly deprived of the benefit of the discussion which had taken place. Many weeks had been occupied with this bill (he hoped the House would pardon him for saying so) before he took the slightest part in the deliberations on the details, and he now sincerely regretted that he had not had firm-

ness enough to adhere to the resolution which he had laid down to himself in the early stage of the debate, not to take any part in the discussion of the details of the measure. But, as he trusted, what he now had to say upon this subject, although more and better things had been said by others, might not be the same that they had said, or might not be said in the same manner, he here borrowed the language of a man who had heretofore been conspicuous in the councils of the country; of one who was unrivalled for readiness and dexterity in debate; who was long without an equal on the floor of this body; who had contributed as much to the revolution of 1801 as any man in this nation, and had derived as little benefit from it; as, to use the words of that celebrated man, what he had to say was not that which had been said by others, and would not be said in their manner, the House would, he trusted, have patience with him during the short time that his strength would allow him to occupy their attention. And he begged them to understand, that the notes which he held in his hands, were not notes on which he meant to speak, but of what others had spoken, and from which he would make the smallest selection in his power.

Here permit me to say, observed Mr. R., that I am obliged, and with great reluctance, to differ from my worthy colleague, who has taken so conspicuous a part in this debate, about one fact, which I will call to his recollection, for I am sure it was in his memory, though sleeping. He has undertaken to state the causes by which the difference in the relative condition of various parts of the Union has been produced; but my worthy colleague has omitted to state the *primum mobile* of the commerce and manufactures to which a portion of the country I need not name owes its present prosperity and wealth. That *primum mobile* was Southern capital. I speak now not of transactions, *quorum pars minima fuit*, but of things of which, nevertheless, I have a contemporaneous recollection. I say, without the fear of contradiction, then, that, in consequence of the enormous depreciation of the evidences of the public debt of this country—the debt proper of the United States (to which must be added an item of not less than twenty millions of dollars, for the State debts assumed by the United States) being bought up and almost engrossed by the people of what were then called the Northern States—a measure which nobody dreamt any thing about, or which nobody had the slightest suspicion—I mean the assumption of the State debts by the Federal Government; these debts being bought up for a mere song, a capital of eighty millions of dollars, or, in other words, a credit to that amount, bearing an interest of six per cent. per annum, (with the exception of nineteen millions, the interest of that debt, which bore an interest of three per cent.,)—a capital of eighty millions of dollars was poured, in a single day, into the



coffers of the North; and to *that* cause we may mainly ascribe the difference so disastrous to the South, between that country and the other portion of this Union, to which I have alluded. When we, said Mr. R., roused by the sufferings of our brethren of Boston, entered into the contest with the mother country, and when we came out of it—when this constitution was adopted, *we* were comparatively rich, *they* were positively poor. What is now our relative situation? They are flourishing and rich; we are tributary to them, not only through the medium of the public debt of which I have spoken, but also through the medium of the pension list, nearly the whole amount of which is disbursed in the Eastern States; and to this creation of a day is to be ascribed the difference of our relative situation, (I hope my worthy colleague will not consider any thing that I say as conflicting with his general principles, to which I heartily subscribe.) Yes, sir, and the price paid for the creation of all that portion of this capital, which consisted of the assumed debts of the States, was the *immense* boon of fixing the Seat of Government where it now is. And I advert to this bargain, because I wish to show to every member of this House, and, if it were possible, to every individual of this nation, the most tremendous and calamitous results of political bargaining.

Sir, when are we to have enough of this tariff question? In 1816 it was supposed to be settled. Only three years thereafter, another proposition for increasing it was sent from this House to the Senate, *baited* with a tax of four cents per pound on brown sugar. It was, fortunately, rejected in that body. In what manner *this bill* is baited it does not become me to say; but I have too distinct a recollection of the vote in Committee of the Whole, on the duty upon molasses, and afterwards of the vote in the House on the same question; of the votes of more than one of the States on that question, not to mark it well. I do not say that the change of the vote on that question was effected by any man's *voting* against his own motion, but I do not hesitate to say that it was effected by one man's electioneering against his own motion. I am very glad, Mr. Speaker, that old Massachusetts Bay, and the Province of Maine and Sagadahock, by whom we stood in the days of the Revolution, now stand by the South, and will not aid in fixing on us this system of taxation, compared with which the taxation of Mr. Grenville and Lord North was as nothing. I speak with knowledge of what I say, when I declare, that this bill is an attempt to reduce the country South of Mason and Dixon's line, and East of the Alleghany Mountains, to a state of worse than colonial bondage; a state to which the domination of Great Britain was, in my judgment, far preferable; and I trust I shall always have the fearless integrity to utter any political sentiment which the head sanctions and the heart ratifies; for the British Parliament never would

have dared to lay such duties on our imports, or their exports to us, either "*at home*" or here, as is now proposed to be laid upon the imports from abroad. At that time we had the command of the market of the vast dominions then subject, and we should have had those which have since been subjected to the British empire; we enjoyed a free trade, eminently superior to any thing we can enjoy if this bill shall go into operation. It is a sacrifice of the interests of a part of this nation to the ideal benefit of the rest. It marks us out as the victims of a worse than Egyptian bondage. It is a barter of so much of our rights, of so much of the fruits of our labor, for political power to be transferred to other hands. It ought to be met, and I trust it will be met, in the Southern country, as was the Stamp act, and by all those measures which I will not detain the House by recapitulating, which succeeded the Stamp act, and produced the final breach with the mother country, which it took about ten years to bring about; as I trust in my conscience, it will not take as long to bring about similar results from this measure, should it become a law.

All policy is very suspicious, says an eminent statesman, that sacrifices the interest of any part of the community to the ideal good of the whole; and those governments only are tolerable where, by the necessary construction of the political machine, the interests of all the parts are obliged to be protected by it. Here is a district of country extending from the Patapsco to the Gulf of Mexico, from the Alleghany to the Atlantic, a district which, taking in all that part of Maryland lying south of the Patapsco and east of Elk River, raises five-sixths of all the exports of this country that are of home growth—I have in my hand the official statements, which prove it, but which I will not weary the House by reading,—in all this country. Yea, sir, and I bless God for it; for, with all the fantastic and preposterous theories about the rights of man, (the *theories*, not the rights themselves, I speak of,) there is nothing but power that can restrain power—I bless God that, in this insulted, oppressed, and outraged region, we are, as to our counsels in regard to this measure, but as one man; that there exists on the subject but one feeling and one interest. We are proscribed, and put to the ban; and if we do not feel, and feeling do not act, we are bastards to those fathers who achieved the Revolution; then shall we deserve to make our bricks without straw. There is no case on record in which a proposition like this, suddenly changing the whole frame of a country's polity, tearing asunder every ligature of the body politic, was ever carried by a lean majority of two or three votes, unless it be the usurpation of the Septennial act, which passed the British Parliament by, I think, a majority of one vote, the same that laid the tax on cotton bagging. I do not stop here, sir, to argue about the constitutionality of this bill; I

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consider the constitution a dead letter; I consider it to consist, at this time, of the power of the General Government and the power of the States—that is the constitution. You may intrench yourself in parchment to the teeth, says Lord Chatham, the sword will find its way to the vitals of the constitution. I have no faith in parchment, sir; I have no faith in the abracadabra of the constitution; I have no faith in it. I *have* faith in the power of that Commonwealth, of which I am an unworthy son; in the power of those Carolinas, and of that Georgia, in her ancient and utmost extent, to the Mississippi, which went with us through the valley of the shadow of death, in the war of our independence. I have said that I shall not stop to discuss the constitutionality of this question, for that reason, and for a better; that there never was a constitution under the sun, in which, by an unwise exercise of the powers of the government, the people may not be driven to the extremity of resistance by force. “For it is not, perhaps, so much by the assumption of unlawful powers, as by the unwise or unwarrantable use of those which are most legal, that governments oppose their true end and object; for there is such a thing as tyranny as well as usurpation.” If, under a power to regulate trade, you prevent exportation; if, with the most approved spring lancets, you draw the last drop of blood from our veins; if, *secundum artem*, you draw the last shilling from our pockets, what are the checks of the constitution to us? A fig for the constitution! When the scorpion’s sting is probing us to the quick, shall we stop to chop logic? Shall we get some learned and cunning clerk to say whether the power to do this is to be found in the constitution, and then, if he, from whatever motive, shall maintain the affirmative, like the animal whose fleece forms so material a portion of this bill, quietly lie down and be shorn?

Sir, events now passing elsewhere, which plant a thorn in my pillow and a dagger in my heart, admonish me of the difficulty of governing with sobriety any people who are over head and ears in debt. That state of things begets a temper which sets at naught every thing like reason and common sense. This country is unquestionably laboring under great distress, but we cannot legislate it out of that distress. We may, by your legislation, reduce all the country south and east of Mason and Dixon’s line, the whites as well as the blacks, to the condition of Helots—you can do no more. We have had placed before us, in the course of this discussion, foreign examples and authorities; and among other things, we have been told, as an argument in favor of this measure, of the prosperity of Great Britain. Have gentlemen taken into consideration the peculiar advantages of Great Britain? Have they taken into consideration that, not excepting Mexico, and that fine country which lies between the Orinoco and the Caribbean Sea, England is decidedly superior in point of physical advantages

to every country under the sun? This is unquestionably true. I will enumerate some of those advantages. First, there is her climate. In England, such is the temperature of the air, that a man can there do more days’ work in the year, and more hours’ work in the day, than in any other climate in the world; of course I include Scotland and Ireland in this description. It is in such a climate only, that the human animal can bear without extirpation the corrupted air, the noisome exhalations, the incessant labor of these accursed manufactories. Yes, sir, accursed; for I say it is an accursed thing, which I will neither taste, nor touch, nor handle. If we were to act here on the English system, we should have the yellow fever at Philadelphia, New York, &c., not in August merely, but from June to January, and from January to June. The climate of this country alone, were there no other natural obstacle to it, says aloud, you shall not manufacture! Even our tobacco factories, admitted to be the most wholesome of any sort of factories, are known to be, where extensive, the very nidus (if I may use the expression) of yellow fever and other fevers of similar type. In another of the advantages of Great Britain, so important to her prosperity, we are almost on a par with her, if we knew how properly to use it. *Fortunatos nimium sua si bona norint*—for, as regards defence, we are, to all intents and purposes, almost as much an island as England herself. But *one* of her insular advantages *we* can never acquire. Every part of that country is accessible from the sea. There, as you recede from the sea, you do not get further from the sea. I know that a great deal will be said of our majestic rivers, about the father of floods and his tributary streams; but with the Ohio frozen up all the Winter, and dry all the summer, with a long, tortuous, difficult, and dangerous navigation thence to the ocean, the gentlemen of the West may rest assured that they will never derive one particle of advantage, from even a total prohibition of foreign manufactures. You may succeed in reducing *us* to your own level of misery; but, if we were to *agree* to become your slaves, you never can derive one farthing of advantage from this bill. What parts of this country can derive any advantage from it? Those parts only, where there is a water power in immediate contact with navigation, such as the vicinities of Boston, Providence, Baltimore, Richmond, &c. Petersburg is the last of these as you travel south.\* You take a bag of cotton up the river to Pittsburg, or to Zanesville, to have it manufactured and sent down to New Orleans for a market, and before your bag of cotton has got to the place of manufacture, the manufacturer of Providence has received his returns for the goods made from his bag of cotton purchased at the same time that you pur-

\* Petersburg is the last of these situations combining navigation and water power, as you travel southward from Boston to New Orleans.

chased yours. No, sir; gentlemen may as well insist that because the Chesapeake Bay, *mare nostrum*, our Mediterranean Sea, gives us every advantage of navigation, we shall exclude from it every thing but steamboats and those boats called *kak' axochen*, *per emphasin*, *par excellence*, Kentucky boats—a sort of huge, square, clumsy wooden box. And why not insist upon it? Haven't you "the power to regulate commerce?" Would not that, too, be a "regulation of commerce?" It would, indeed, and a pretty regulation it is; and so is this bill. And, sir, I marvel that the representation from the great commercial State of New York should be in favor of this bill. If operative—and if inoperative why talk of it?—if operative, it must, like the embargo of 1807, '8, '9, transfer no small portion of the wealth of the London of America, as New York has been called, to Quebec and Montreal. She will receive the most of her imports from abroad, down the river. I do not know any bill that could be better calculated for Vermont than this bill; because, through Vermont, from Quebec, Montreal, and other positions on the St. Lawrence, we are, if it passes, unquestionably to receive our supplies of foreign goods. It will, no doubt, also, suit the Niagara frontier.

But, sir, I must not suffer myself to be led too far astray from the topic of the peculiar advantages of England as a manufacturing country. Her vast beds of coal are inexhaustible; there are daily discoveries of quantities of it, greater than ages past have yet consumed; to which beds of coal her manufacturing establishments have been transferred, as any man may see who will compare the present population of her towns with what it was formerly. It is to these beds of coal that Birmingham, Manchester, Wolverhampton, Sheffield, Leeds, and other manufacturing towns, owe their growth. If you could destroy her coal in one day, you would cut at once the sinews of her power. Then there are her metals, and particularly tin, of which she has the exclusive monopoly. Tin, I know, is to be found in Japan, and perhaps elsewhere, but, in practice, England has now the monopoly of that article. I might go further, said Mr. R., and I might say that England possesses an advantage, *quo ad hoc*, in her institutions; for there men are compelled to pay their debts. But, here, men are not only not compelled to pay their debts, but they are protected in the refusal to pay them, in the scandalous evasion of their legal obligations; and, after being convicted of embezzling the public money, and the money of others, of which they were the appointed guardians and trustees, they have the impudence to obtrude their unblushing fronts into society, and elbow honest men out of their way! There, though all men are on a footing of equality on the highway, and in the courts of law, at mill and at market, yet the castes in Hindostan are not more distinctly separated one from the other, than the different classes

of society are in England. It is true, that it is practicable for a wealthy merchant or a manufacturer, or his descendants, after having, through two or three generations, washed out what is considered the stain of their original occupation, to emerge, by slow degrees, into the higher ranks of society; but this rarely happens. Can you find men of vast fortune, in this country, content to move in the lower circles—content as the ox under the daily drudgery of the yoke? It is true that, in England, some of these wealthy people take it into their heads to buy seats in Parliament; but, when they get there, unless they possess great talents, they are mere nonentities; their existence is only to be found in the Red Book, which contains a list of the members of Parliament. Now, sir, I wish to know, if, in the Western country, where any man may get beastly drunk for three pence sterling—in England, you cannot get a small wine-glass of spirits under twenty-five cents; one such drink of grog as I have seen swallowed in this country would there cost a dollar;—in the Western country, where every man can get as much meat and bread as he can consume, and yet spend the best part of his days, and nights too, perhaps, on the tavern benches, or loitering at the cross-roads asking the news,—can you expect the people of such a country, with countless millions of wild land and wild animals besides, can be cooped up in manufacturing establishments, and made to work sixteen hours a day, under the superintendence of a driver—yes, a driver, compared with whom a Southern overseer is a gentleman and man of refinement; for, if they do not work, (these work people in the manufactories,) they cannot eat; and, among all the punishments that can be devised, (put death, even, among the number,) I defy you to get as much work out of a man by any of them, as when he knows that he must work before he can eat.

But, sir, if we follow the example of England, in one respect, as we are invited to do, we must also follow it in another. If we adopt her policy, we must adopt her institutions also. Her policy is the result of her institutions, and our institutions must be, as the result of our policy, assimilated to hers. We cannot adopt such an exterior system as that of England, without adopting also her interior policy. We have heard of her wealth, her greatness, her glory; but her eulogist is silent about the poverty, wretchedness, misery, of the lowest orders. Show me the country, say gentlemen, which has risen to glory without this system of bounties and protection on manufactures! Sir, show me any country, beyond our own, which has risen to glory or to greatness without an established church, or without a powerful aristocracy, if not a hereditary nobility. I know no country in Europe, except Turkey, without hereditary nobles. Must we, too, have these Corinthian ornaments of society, because those countries of greatness and glory have given in

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to them? But, after we shall have destroyed all our foreign trade; after we shall have, by the prevention of imports, cut off exports—thus keeping the promise of the constitution to the ear, and breaking it to the hope—paltering with the people in a double sense,—after we shall have done this, we are told, “we shall only have to resort to an *excise*; we have only to *change the mode* of collection of taxes from the people; both modes of taxation are *voluntary*.” Very voluntary! The exciseman comes into my house; searches my premises; respects not even the privacy of female apartments; measures, gauges, and weighs every thing; levies a tax upon every thing; and then tells me the tax is a voluntary one on my part, and that I am or ought to be content. “Yes, voluntary,” as Portia said to Shylock, when she played the judge so rarely—“Art thou content, Jew? Art thou content?”

These taxes, however, it seems, are voluntary, “as being altogether upon consumption.” By a recent speech on this subject, the greater part of which, said Mr. R., I was so fortunate as to hear, I learn that there have been only two hundred capital prosecutions in England, within a given time, for violations of the revenue laws. Are we ready, if one of us, too poor to own a saddle-horse, should borrow a saddle and clap it on his plough-horse, to ride to church, or court, or mill, or market, to be taxed for a surplus saddle-horse, and surcharged for having failed to list him as such? Are gentlemen aware of the inquisitorial, dispensing, arbitrary, and almost Papal power of the Commissioners of Excise? I shall not stop to go into a detail of them; but I never did expect to hear it said, on this floor, and by a gentleman from Kentucky, too, that the excise system was a mere scarecrow,—a bugbear—that the sound of the words constituted all the difference between a system of excise and a system of customs; that both meant the same thing. “Write them together; yours is as fair a name. Sound them; it doth become the mouth as well.” Here, sir, I must beg leave to differ; I do not think it does. “Weigh them; it is as heavy.” That I grant. “Conjure with them”—excise “will start a *spirit* as soon as *customs*.”

This I verily believe, sir, and I wish, with all my heart, if this bill is to pass—if new and unnecessary burdens are to be wantonly imposed upon the people—that we were to return home with the blessed news of a tax or excise, not less by way of “minimum,” than fifty cents per gallon upon whiskey. And here, if I did not consider an exciseman to bear, according to the language of the old law books, *caput lupinum*, and that it was almost as meritorious to shoot such a hell-hound of tyranny, as to shoot a wolf or a mad dog—and, if I did not know that any thing like an excise in this country is in effect utterly impracticable, I myself, feeling, seeing, blushing for my country, would gladly vote to lay an excise on this abominable liquor, the lavish consumption of

which renders this the most drunken nation under the sun; and yet, we have refused to take the duties from wines, from cheap French wines particularly, that might lure the dog from his vomit, and lay the foundation of a reformation of the public manners. Sir, an excise system can never be maintained in this country. I had as lief be a tythe-proctor in Ireland, and met on a dark night in a narrow road by a dozen white-boys, or peep-of-day boys, or hearts of oak, or hearts of steel, as an exciseman in the Alleghany mountains, met, in a lonely road, or by-place, by a backwoodsman, with a rifle in his hand. With regard to Ireland, the British chancellor of the exchequer has been obliged to reduce the excise in Ireland on distilled spirits, to comparatively nothing to what it was formerly, in consequence of the impossibility of collecting it in that country. Ireland is, not to speak with statistical accuracy, about the size of Pennsylvania, containing something like twenty-five thousand square miles of territory, with a population of six millions of inhabitants, nearly as great a number as the whole of the white population of the United States; with a standing army of 20,000 men; with another standing army, composed of all those classes in civil life, who, through the instrumentality of that army, keep the wretched people in subjection—under all these circumstances, even in Ireland, the excise cannot be collected. I venture to say, that no army that the earth has ever seen—not such a one as that of Bonaparte, which marched to the invasion of Russia—would be capable of collecting an excise in this country—not such a one as that described, if you will allow me to give some delightful poetry in exchange for very wretched prose, as Milton has described:

“Such forces met not, nor so wide a camp,  
When Agrican, with all his northern powers,  
Besieged Albracca, as romances tell,  
The city of Calliphron, from whence to win  
The fairest of her sex, Angelica,  
His daughter, sought by many prowess knights,  
Both Paynim and the Peers of Charlemagne.”

Not such a force, nor even the troops with which he compares them, which were no less than “the legion fiends of hell,” could collect an excise here. If any officer of our Government were to take the field a still-hunting, as they call it in Ireland, among our Southern or Western forests and mountains, I should like to see the throwing off the hounds. I have still enough of the sportsman about me, that I should like to see the breaking cover; and, above all, I should like to be in at the death.

And what, said Mr. R., are we now about to do? For what was the constitution formed? To drive the people of any part of this Union from the plough to the distaff? Sir, the Constitution of the United States never would have been formed, and if formed, would have been scouted, *una voce*, by the people, if viewed as a means for effecting purposes like this. The constitution was formed for external purposes,

to raise armies and navies, and to lay uniform duties on imports, to raise a revenue to defray the expenditure for such objects. What are you going to do now? To turn the constitution wrong side out; to abandon foreign commerce and exterior relations—I am sorry to use this Frenchified word—the foreign affairs, which it was established to regulate, and convert it into a municipal agent, to carry a system of espionage and excise into every log-house in the United States. We went to war with Great Britain for free trade and sailors' rights; we made a treaty of peace in which I never could, with the aid of my glasses, see a word about either the one or the other of these objects of contention; we are now determined never to be engaged in another for such purposes; for we are, ourselves, putting an end to them. And, by the way of comfort in this state of things, we have been told, by the doctor as well as by the apothecary, that much cannot be immediately expected from this new scheme; that years will pass away before its beneficial effects will be fully realized. And to whom is this told? To the consumptive patient, it is said—here is the remedy; persevere in it *for a few years*, and it will infallibly cure your disorder; and this infallible remedy is prescribed for pulmonary consumption, which is an opprobrium of physicians, and has reached a stage that, in a few months, not to say days, must inevitably terminate the existence of the patient. This is to be done, too, on the plea that the people who call for this measure are already ruined. I will do any thing, sir, in reason, to relieve these persons; but I can never agree, because they are ruined, and we are half ruined only, that we shall be entirely ruined, for the contingent possibility of their relief. We have no belief in this new theory—new, for it came in with the French revolution, and that is of modern date—of the transfusion of blood from a healthy animal to a sick one: and, if there is to be such a transfusion for the benefit of these ruined persons now, we refer the gentlemen to bulls and goats for supplies of blood, for we should be the veriest asses to permit them to draw our own.

We are told, however, that we have nothing to do but to postpone the payment of the public debt for a few years, and wait for an accumulation of wealth, for a new run of luck—

"Rusticus expectat dum defluet omnis et ille  
Labitur et labitur in omne volubilis ævum."

This postponement of the public debt is no novelty. All debts are, nowadays, as old Lilly hath it, in the future in *rus*, "about to be" paid. We have gone on postponing paying the national debt, and our own debts, until individual credit is at an end; until property, low as it is reduced in price by our fantastic legislation, can no longer be bought but for ready money. Here is one, and there the other. I am describing a state of society which I know to exist in a part of the country,

and which I hear, with concern, does exist in a greater degree, in a much larger portion of the country than I pretend to be personally acquainted with.

In all beneficial changes in the natural world—and the sentiment is illustrated by one of the most beautiful effusions of imagination and genius that I ever read—in all those changes, which are the works of an all-wise, all-seeing, and superintending Providence, as in the insensible gradation by which the infant bud expands into manhood, and from manhood to senility; or, if you will, to caducity itself—you find nature never working but by gradual and imperceptible changes; you cannot see the object move, but take your eye from it for a while, and like the index of that clock, you can see that it has moved. The old proverb says, God works good, and always by degrees. The devil, on the other hand, is bent on mischief, and always in a hurry. *He* cannot stay: his object is mischief, which can best be effected suddenly, and he must be gone to work elsewhere. But we have the comfort, under the pressure of this measure, that at least no force is exercised upon us; we are not obliged to buy goods of foreign manufacture. It is true, sir, that gentlemen have not said you shall not send your tobacco or cotton abroad; but they have said the same thing, in other words; by preventing the importation of the returns which we used to receive, and without which, the sale or exchange of our produce is impracticable, they say to us, you shall sell only to us, and we will give you what we please; you shall buy only of us, but at what price we please to ask. But no force is used! You are at full liberty not to buy or to sell. Sir, when an English judge once told a certain curate at Brentford, that the court of chancery was open equally to the rich and the poor, Horne Tooke replied, "so, my lord, is the London tavern." You show a blanket or a warm rug to a wretch that is shivering with cold, and tell him, you shall get one nowhere else, but you are at liberty not to buy mine.

No Jew, who ever tampered with the necessities of a profligate young heir, lending him money at a usury of cent. per cent., ever acted more paternally than the advocates of this bill, to those upon whom it is to operate. I advise you, young man, for your good, says the usurer. I do these things very reluctantly, says Moses—these courses will lead you to ruin. But, no *force*—no, sir, no force short of Russian despotism, shall induce me to purchase, or, knowing it, to use any article from the region of country which attempts to cram this bill down our throats. On this, we of the South are resolved, as were our fathers about the tea, which they refused to drink; for this is the same old question of the stamp act in a new shape, viz: whether they, who have no common feeling with us, shall impose on us, not merely a burdensome but a ruinous tax, and that, by way of experiment and sport. And I

APRIL, 1834.]

*The Tariff Bill.*

[H. OF R.]

say again, if we are to submit to such usurpations, give me George Grenville, give me Lord North for a master. It is in this point of view that I most deprecate the bill. If, said Mr. R., from the language I have used, any gentleman shall believe that I am not as much attached to this Union as any one on this floor, he will labor under great mistake. But there is no magic in this word *union*. I value it as the means of preserving the liberty and happiness of the people. Marriage itself is a good thing, but the marriages of Mezentius were not so esteemed. The marriage of Sinbad, the sailor, with the corpse of his deceased wife, was a union; and just such a union will this be, if, by a bare majority in both Houses, this bill shall become a law. And, I ask, sir, whether it will redound to the honor of this House, if this bill should pass, that the people should owe their escape to the act of any others rather than to us? Shall we, when even the British Parliament are taking off taxes by wholesale—when all the assessed taxes are diminished fifty per cent.—when the tax on salt is reduced seven-eighths, with a pledge that the remainder shall come off, and the whole would have been repealed, but that it was kept on as a salvo for the wounded pride of Mr. Chancellor of the Exchequer,\* who, when asked—why keep on this odious tax, which brings but a paltry hundred and fifty thousand per annum? answered, by subterfuge and evasion, as I have heard done in this House, and drew back upon his resources, his majority—how will it answer for the people to look up for their escape from oppression, not to their immediate Representatives, but to the Representatives of the States, or, possibly, to the Executive? And, permit me here to say, and I say it freely, because it is true, that I join as heartily as any man, in reprehending the “cold, ambiguous support of the Executive Government to this bill.” I do not use my own words; I deprecate as much as any member of this House can do, that the Executive of this country should lend to this bill, or to any other bill, a cold and ambiguous support, or support of any sort, until it come before him in the shape of a law, unless it be a measure which he, in his constitutional capacity, may have invited Congress to pass. I may be permitted to say, and I will say, that, in case this bill should be unhappily presented to him for his signature—and as an allusion has been made to him in debate, I presume I may repeat it—I hope he will recollect how much the

country that gave him birth has done for him, and the little, not to say worse than nothing, that, during his administration, he has done for her. I hope, sir, he will scout the bill as contrary to the genius of our Government, to the whole spirit and letter of our confederation—I say of our confederation—Blessed be God, it is a confederation, and that it contains within itself the redeeming power which has more than once been exercised—and that it contains within itself the seeds of preservation, if not of this Union, at least of the individual Commonwealths of which it is composed.

But, sir, not satisfied with an appeal to the example of Great Britain, whom we have been content hitherto very sedulously to censure and to imitate—as I once heard a person say that it was absolutely necessary for persons of a peculiar character to be extremely vehement of censure of the very vice of which they are themselves guilty—the example of Russia has been introduced, the very last, I should suppose, that would be brought into this House on this or any other question. A gentleman from South Carolina, (Mr. POINSETT,) whose intelligence and information I very much respect, but the feebleness of whose voice does not permit him to be heard as distinctly as could be wished, remarked the other day, and, having it on my notes, I will, with his leave, repeat it—Russia is cursed with a paper money, which, in point of depreciation and its consequent embarrassment to her, can boast of no advantage, I believe, even over that of Kentucky—so cursed, that it is impossible, until her circulation is restored to a healthful state, she can ever take her station as a commercial or manufacturing nation, to any extent. Nay, more, Russia, with the exception of a few of her provinces, consists, like the interior of America, of a vast inland continent, desolated and deformed by prairies, or steppes, as they are there called, inhabited by a sparse population; and, as an appeal has been made to experience, said Mr. R., I ask any gentleman to show me an instance of any country under the sun, that has, under these circumstances, taken a stand as a manufacturing or great commercial nation. These great rivers and inland seas cut a mighty figure on the map, but, when you come to consider of capacities for foreign commerce, how unlike the insular situation of Great Britain, or the peninsular situation of almost the whole continent of Europe—surrounded or penetrated as it is by inland seas and gulfs! May I be pardoned for adverting to the fact—I know that comparisons are extremely odious—that, when we look to Salem and Boston, to parts of the country where skill, and capital, and industry, notoriously exist, we find opposition to this bill; and that, when we look to countries which could sooner build one hundred pyramids, such as that of Cheops, than manufacture one cambric needle, or a paper of White Chapel pins, or a watch-spring, we hear a clamor about this system for the protection of manu-

\* It is a subject of much regret to me, that, at this time, I had not had the benefit of the very able speech of his successor in office, (Mr. Robinson,) which reached the United States a few days after. It ought to be reprinted in every leading paper in the Union. With the good sense, liberality, manliness, and good faith, which characterize the whole speech, he states that Government is pledged to the abolition of the small remnant of the salt tax; and if insisted on by the Opposition, the pledge shall be redeemed. He suggests, however, the policy of substituting some other reduction in lieu of the small tax now payable on salt, which he conceives to be as little burdensome, at its present reduced rate, as any other, and more easy of collection.

factures. The merchants and manufacturers of Massachusetts, New Hampshire, the Province of Maine, and Sagadahock, reel this bill, whilst men in hunting-shirts, with deer-skin leggings and moccasins on their feet, want protection for manufactures—men with rifles on their shoulders, and long knives in their belts, seeking in the forest to lay in their next Winter's supply of bear meat. But it is not there alone the cry is heard. It is at Baltimore—decayed, deserted Baltimore, whose exports have more than one-half decreased, whilst those of Boston have four times increased—it is decayed and deserted Baltimore that comes here and asks us for the protection of those interests which have grown up during the late war—privateering among the number, I presume. Philadelphia, too, in a state of atrophy, asks for the measure—Philadelphia, who never can, pass what bill you please, have a foreign trade to any great amount, or become a great manufacturing town, for which she wants all the elements of climate, coal, and capital—this city, now over built, swollen to the utmost extent of the integument, and utterly destitute of force or weight in the Union, wants this bill for the protection of the domestic industry of her free blacks, I presume. New York, too, is now willing to build up Montreal and Quebec at her expense—to convert the Hudson into a theatre for rival disputants about steamboats in the courts below stairs, and for them, and such as them, with a coasting license, to ply upon. The true remedy, and the only one, for the iron manufacturer of Pennsylvania, who has nothing but iron to sell, and that, they tell us, is worth nothing, would be to lay on the table of this House a declaration of war in blank, and then go into a Committee of the Whole, to see what nation in the world it would be most convenient to go to war with—for, fill the blank with the name of what power you please, it must be a sovereign State, and, though it have not a seaman or a vessel in the world, its commissions are as good and valid in an admiralty court, as those of the Lord High Admiral of Great Britain. In this way you will put our furnaces in blast, and your paper mills into full operation; and many, very many, who, during the last war, transported flour on horseback for the supply of your army, at the cost of a hundred dollars per barrel, and who have since transported provisions in steamboats up and down the Missouri River—very many such individuals would thus be taken out of the very jaws of bankruptcy and lifted up to opulence, at the expense of that people, at whose expense, also, you are now about to enable these iron manufacturers to fill their pockets. New England does not want this bill. Connecticut, indeed, molasses having been thrown overboard to lighten the ship, votes for this bill. A word in the ear of the land of steady habits—I voted against the tax on the principle, which has always directed my public life, not to compromise my opinions—not to do evil that good

may come of it—let me tell the land of steady habits, that, after this bill shall be fairly off the shore; after we shall have cleared decks and made ready for action again; after she shall have imposed on me the onerous burden of this bill, she shall have the benefit of my vote to put on again this duty on molasses—not at this day—this is not the last tariff measure; for, in less than five years, I would, if I were a betting man, wager any odds that we have another tariff proposition, worse by far than that, amendments to which gentlemen had strangled yesterday by the bow-string of the previous question. Fair dealing leads to safe counsels and safe issues. There is a certain left-handed wisdom that often overreaches its own objects, which grasps at the shadow and lets go the substance. We shall not only have this duty on molasses, I can tell the gentlemen from Connecticut, but we shall have, moreover, an additional bounty on intoxication by whiskey, in the shape of an additional duty on foreign distilled spirits.

The ancient Commonwealth of Virginia, one of whose unworthy sons, and more unworthy representatives, I am, said Mr. R., must now begin to open her eyes to the fatal policy which she has pursued for the last forty years. I have not a doubt, that they who were the agents for transferring her vast, and boundless, and fertile country to the United States, with an express stipulation, in effect, that not an acre of it should ever inure to the benefit of any man from Virginia, were as respectable, and kind-hearted, and hospitable, and polished, and guileless Virginia gentlemen, as ever were cheated out of their estates by their overseers; men who, so long as they could command the means, by sale of their last acre, or last negro, would have a good dinner, and give a hearty welcome to whosoever chose to drop in, to eat, friend or stranger, bidden or unbidden. What will be the effect of this bill on the Southern States? The effect of this policy is, what I shudder to look at; the more, because the next census is held up *in terrorem* over us. We are told, you had better consent to this—we are not threatened exactly with General Gage and the Boston Port Bill—but we are told by gentlemen, we shall, after the next census, so saddle, and bridle, and *martingale* you, that you will be easily regulated by any bit, or whip, however severe, or spurs, however rank, of domestic manufacture, that we choose to use. But this argument, sir, has no weight in it with me. I do not choose to be robbed now, because, after I am once robbed, it will become easier to rob me again. *Ostea principis*, is my maxim—because every act of extension of the system operates in a twofold way, decreasing the strength and means of the robber, and increasing those of the robber. This is as true as any proposition in mathematics. Gentlemen need not tell us, we had better give in at once. No, sir, we shall not give in; no, we shall hold out—we shall not

APRIL, 1824.]

The Tariff Bill.

[H. OF R.]

give in. We do not mean to be threatened out of our rights by the menace of another census. We are aware of our folly, and it is our business to provide against the consequences of it, but not in this way. When I recollect, that the tariff of 1816 was followed by that of 1819-'20, and that by this measure of 1828-'24, I cannot believe that we are, at any time hereafter, long to be exempt from the demands of those sturdy beggars, who will take no denial. Every concession does but render every fresh demand and new concession more easy. It is like those dastard nations who vainly think to buy peace. When I look back to what the country of which I am a representative was, and when I see what it is—when I recollect the expression of Lord Cornwallis, applied to Virginia, “that great and unfettered colony,” which he was about to enter, not without some misgivings of his mind as to the result of the invasion—when I compare what she was when this House of Representatives first assembled in the city of New York, and what she now is, I know, by the disastrous contrast, that her councils have not been governed by statesmen. They might be admirable professors of a university, powerful dialecticians *ex cathedra*, but no sound counsels of wise statesmen could ever lead to such practical ill-results as are exhibited by a comparison of the past and present condition of the ancient colony and dominion of Virginia.

In the course of this discussion, said Mr. R., I have heard, I will not say with surprise, because *nil admirari* is my motto—no doctrine that can be broached on this floor can ever, hereafter, excite surprise in my mind—I have heard the names of Say, Ganilh, Adam Smith, and Ricardo, pronounced, not only in terms, but in a tone, of sneering contempt, as visionary theorists, destitute of practical wisdom, and the whole clan of Scotch and Quarterly reviewers lugged in to boot. This, sir, is a sweeping clause of proscription. With the names of Say, Smith, and Ganilh, I profess to be acquainted, for I, too, am versed in *title pages*, but I did not expect to hear, in this House, a name, with which I am a little further acquainted, treated with so little ceremony, and by whom? I leave Adam Smith to the simplicity and majesty, and strength of his own native genius, which has canonized his name—a name which will be pronounced with veneration, when not one name in this House will be remembered. But, one word as to Ricardo, the last-mentioned of those writers—a new authority, though the grave has already closed upon him, and set its seal upon his reputation. I shall speak of him in the language of a man of as great a genius as this, or perhaps any, age has ever produced—a man remarkable for the depth of his reflections and the acumen of his penetration. “I had been led,” says this man, “to look into loads of books—my understanding had for too many years been intimate with severe thinkers, with logic, and the great masters of knowledge,

not to be aware of the utter feebleness of the herd of modern economists. I sometimes read chapters from more recent works, or parts of Parliamentary debates. I saw that these [ominous words!] were generally the very dregs and rinsings of the human intellect.” [I am very glad, sir, he did not read *our* debates. What would he have said of ours?] “At length a friend sent me Mr. Ricardo’s book, and recurring to my own prophetic anticipation of the advent of some legislator on this science, I said, Thou art the man. Wonder and curiosity had long been dead in me; yet I wondered once more. Had this profound work been really written in England during the 19th century? Could it be that an Englishman, and he not in academic bowers, but oppressed by mercantile and senatorial cares, had accomplished what all the universities and a century of thought had failed to advance by one hair’s breadth? All other writers had been crushed and overlaid by the enormous weight of facts and documents; Mr. Ricardo had deduced, *a priori*, from the understanding itself, laws which first gave a ray of light into the unwieldy chaos of materials, and had constructed what had been but a collection of tentative discussions into a science of regular proportions, now first standing on an eternal basis.”

I pronounce no opinion of my own, said Mr. R., on Ricardo; I recur rather to the opinion of a man, inferior in point of original and native genius, and that highly cultivated, too, to none of the moderns, and few of the ancients. Upon this subject, what shall we say to the following fact? Butler, who is known to gentlemen of the profession of the law, as the annotator, with Hargrave, on Lord Coke, speaking with Fox as to political economy—that most extraordinary man, unrivalled for his powers of debate, excelled by no man that ever lived, or probably ever will live, as a public debater, and of the deepest of political erudition, fairly confessed that he had never read Adam Smith. Butler said to Mr. Fox “that he had never read Adam Smith’s work on the Wealth of Nations.” “To tell you the truth,” replied Mr. Fox, “nor I neither. There is something in all these subjects that passes my comprehension—something so wide that I could never embrace them myself, or find any one who did.” And yet we see how we, with our little dividers, undertake to lay off the scale, and with our packthread to take the soundings, and speak with a confidence peculiar to quacks (in which the regular bred professor never indulges) on this abstruse and perplexing subject. Confidence is one thing, knowledge another; of the want of which overweening confidence is notoriously the indication. What of that? Let Ganilh, Say, Ricardo, Smith—all Greek and Roman fame be against us—we appeal to Dionysius in support of our doctrines; and to him not on the throne of Syracuse but at Corinth—not in absolute possession of that most wonderful and enigmatical city, as difficult to comprehend as the



abstrusest problem of political economy, which furnished not only the means but the men for supporting the greatest wars—a kingdom within itself, under whose ascendant the genius of Athens, in her most high and palmy state, quailed, and stood rebuked. No; we follow the pedagogue to the schools—dictating in the classic shades of Longwood—(*lucus a non lucendo*)—to his disciples.

We have been told that the economists are right in theory and wrong in practice; which is as much as to say, that two bodies occupy at the same time the same space; for it is equally impracticable to be right in theory and wrong in practice. It is easy to be wrong in practice; but if our practice corresponds with our theory, it is a solecism to say that we can be right in the one and wrong in the other. As for Alexander and Cæsar, said Mr. R., I have as little respect for their memory as is consistent with that involuntary homage which all must pay to men of their prowess and abilities; and if Alexander had suffered himself to be led by the nose out of Babylon and banished to Sinope, or if Cæsar had suffered himself to be deprived of his imperial sway, not by the dagger of the assassin, but by his own slavish fears, I should have as little respect for their memory as for that of him whose example has on this occasion been held up to us for admiration. Speaking of that man who has kept me awake night after night, and has been to me an incubus by day, for fear of the vastness of his designs, I cannot conceive of a spectacle so pitiful, so despicable, as that man, under those circumstances; and if the work dictated by him at St. Helena be read with the slightest attention, no forsworn witness at the Old Bailey was ever detected in so many contradictions as he has been guilty of. No, sir, the Jupiter from whose reluctant hand the thunderbolt is wrung, is not the one at whose shrine I worship—not that I think that the true Amphitryon is always him with whom we dine—he is not the political economist who is to take place of Smith and Ricardo. Will any man make me believe that he understood the theory or the practice of political economy better than these men, or than Charles Fox? Impossible. When I recollect what that man might have done for liberty, and what he did; when I recollect that to him we owe this Holy Alliance—this fearful power of Russia—of Russia, where I should advise persons to go who desired to be instructed in petty treason by the murder of a husband, or in parricide by the murder of a father, but from whom I should never think of taking a lesson in political economy—to whom I would say, rather, pay your debts, not in depreciated paper; do not commit daily acts of bankruptcy; restore your currency; practise on the principles of liberality and justice, and then I will listen to you. No, sir, Russia may, if she pleases, not only lay heavy duties on imports; she may prohibit them if she pleases; she has nothing to export but what some other inland countries have, political

power—physical, to be sure, as well as intellectual power—but she does not even dare to attack the Turk; she cannot stir; she is something like some of our interior people of the South, who have plenty of land, plenty of serfs, smoke-houses filled with meat, and very fine horses to ride, but who, when they go abroad, have not one shilling to bless themselves with; and so long as she is at peace, and does not trouble the rest of the world, so long she may be suffered to remain; but, if she should continue to act hereafter as she has done heretofore, it will be the interest of the civilized world to procure her dismemberment, *per fas aut nefas*.

But it is said a measure of this sort is necessary to create employment for the people. Why, sir, where are the handles of the plough? Are they unfit for *young gentlemen* to touch? Or will they rather choose to enter your military academies, where the sons of the rich are educated at the expense of the poor, and where so many political Janizaries are every year turned out, always ready for war, and to support the powers that be—equal to the Strelitzes of Moscow or St Petersburg? I do not speak now of individuals, of course, but of the tendency of the system—the hounds follow the huntsman because he feeds them, and bears the whip. I speak of the system. I concur most heartily, sir, in the censure which has been passed upon the greediness of office, which stands a stigma on the present generation. Men from whom we might expect, and from whom I did expect better things, crowd the ante-chamber of the palace, for every vacant office; nay, even before men are dead, their shoes are wanted for some bare-footed office-seeker. How mistaken was the old Roman, the old Consul, who, whilst he held the plough by one hand, and death held the other, exclaimed, "*Diis immortalibus sero!*"

Our fathers, how did they acquire their property? By straightforward industry, rectitude, and frugality. How did they become dispossessed of their property? By indulging in speculative hopes and designs, seeking the shadow whilst they lost the substance; and now, instead of being, as they were, men of respectability, men of substance, men capable and willing to live independently and honestly, and hospitably too—for who so parsimonious as the prodigal who has nothing to give? What have we become? A nation of sharks, preying on one another through the instrumentality of this paper system, which, if Lycurgus had known of it, he would unquestionably have adopted, in preference to his iron money, if his object had been to make the Spartans the most accomplished knaves, as well as to keep them poor.

We are told that this is a curious constitution of ours: it is made for foreigners and not for ourselves—for the protection of foreign, and not of American industry. Sir, this is a curious constitution of ours, said Mr. R.; and if I were disposed to deny it, I could not succeed. It is an anomaly in itself. It is that supposed impossi-

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bility of all writers, from Aristotle to the present day, an *imperium in imperio*. Nothing like it ever did exist, or possibly ever will under similar circumstances. It is a constitution consisting of confederated bodies, for certain exterior purposes, and, also, for some interior purposes, but leaving to the State authorities, among a great many powers, the very one which we now propose to exercise: for, if we were now passing a *revenue bill*—a bill, the object of which were to raise revenue—however much I should deny the policy, and however I could demonstrate the futility of the plan, I still should deem it to be a constitutional bill—a bill passed to carry, bona fide, into effect, a provision of the constitution, but a bill passed with short-sighted views. But this is no such bill. It is a bill, under pretense of regulating commerce, to take money from the pockets of a very large, and, I thank God, contiguous territory, and to put it into other pockets. One word, sir, on that point; I can assure the gentleman whose appetites are so keenly whetted for our money—I trust, at least, that if this bill passes, there will be a meeting of the members opposed to it, and a general and consentaneous resistance to its operation throughout the whole Southern country—and we shall make it by lawful means; *quant à nous*, the law will be a dead letter. It shall be to me, at least, as innocuous as the pill of the empyric, which I am determined not to swallow. The manufacturer of the East may carry his woollens, or his cottons, or his coffins, to what market he pleases—I do not buy of him. Self defence is the first law of nature. You drive us into it. You create heats and animosities amongst this great family, who ought to live like brothers; and, after you have got this temper of mind roused among the Southern people, do you expect to come among us to trade, and expect us to buy your wares? Sir, not only shall we not buy them, but we shall take such measures (I will not enter into the detail of them now) as shall render it impossible for you to sell them.

Whatever may be said here of the “misguided counsels,” as they have been termed, “of the theorists of Virginia,” they have, so far as regards this question, the confidence of united Virginia. We are asked—does the South lose any thing by this bill—why do you cry out? I put it, sir, to any man, from any part of the country, from the Gulf of Mexico, from the Balize, to the Eastern shore of Maryland—which, I thank heaven, is not yet under the government of Baltimore, and will not be, unless certain theories should come into play in that State, which we have lately heard of, and a majority of men, told by the head, should govern—whether the whole country, between the points I named, is not unanimous in opposition to this bill? Would it not be unexampled, that we should thus complain, protest, resist, and that all the while nothing should be the matter? Are our understandings (however low mine may be rated, much sounder than mine are

engaged in this resistance) to be rated so low as that we are to be made to believe that we are children affrighted by a bugbear? We are asked, however, why do you cry out?—it is all for your good. Sir, this reminds me of the mistresses of George II., who, when they were insulted by the populace on arriving in London, (as all such creatures deserve to be, by every mob,) put their heads out of the window, and said to them, in their broken English, “Goot people, we be come for your goots;” to which one of the mob rejoined, “Yes, and for our chattels too, I fancy.” Just so it is with the oppressive exactions proposed and advocated by the supporters of this bill, on the plea of the good of those who are its victims.

There is not a member of this House, said Mr. R., more deeply penetrated than the one who is endeavoring to address you, with the inadequate manner in which he has discharged the task imposed upon him—in this instance, he will say, on his part, most reluctantly. But, as I have been all my life a smatterer in history, I cannot fail to be struck with the fitness of the comparison instituted by a historian of this country with the Roman republic, just as it was in a state of preparation for a master.

“Sed, post quam luxu, atque desidia civitas corrupta est; rursus respublica, magnitudine sua, imperatorum atque magistratum vitia sustentabat; ac veluti effoeta parentum, multis tempestatibus, haud sane quicquam Romæ virtute magnus fuit.”

Of this quotation, I will, as they sometimes say in the Parliament, for the benefit of the country gentlemen, attempt a translation. “But, after the State had become corrupted by luxury and sloth”—in the Arabian Nights’ Entertainments, we are told of one who laid by his sequins in good money, and when he afterwards came to use them, he found them to be bits of paper, not worth more than old continental (or Kentucky) money—“by luxury and sloth, again the republic,”—and here I press the comparison—“by dint of its own magnitude, its own greatness, its own vastness, born up under the faults, the vices, of its generals, magistrates, and that, too, as if effete—(past bearing) since, for a long while”—I hope the comparison will not hold here—“for a long time scarcely any man had become great at Rome by his merit.” So, sir, it is with this republic. It does not sustain, by its greatness and growing magnitude, the follies and vices of its magistracy. Had this Government been stationary like any of the old Governments of Europe, of the second class, Prussia, for instance, or Holland, by the political evolutions of the last thirty years—I might say the last twelve years—it would have sunk into insignificance and debility: and it is only upon this resource, the increasing greatness of this republic, that the blunderers who plunge blindfold into schemes like this, can rely for any possibility of salvation from the effect of their own rash, undigested measures. It is true, that the race is not to the swift, nor the battle to the

strong; and elsewhere than in the republic of Rome and of other times, than the days of Cati-line, it may be said, "Haud sane quisque virtute magnus est."

"Tis not in mortals to command success!—

But do you *more* Sempronius—*don't* deserve it,

And take my word you won't have any less;

Be wary, watch the time, and *always* serve it;

Give gentle way when there's too great a press;

And for your conscience only learn to nerve it—

For, like a racer, or a boxer, training,

'Twill make, if proved, vast efforts without pain-ing."

I had more to say, Mr. Speaker, could I have said it, on this subject. But I cannot sit down without asking those who were once my brethren of the church, the elders in the young family of this good old republic of the thirteen States, if they can consent to rivet upon us this system, from which no benefit can possibly result to themselves. I put it to them as descendants of the renowned colony of Virginia—as children sprung from her loins—if, for the sake of all the benefits with which this bill is pretended to be freighted to them—granting such to be the fact, for argument's sake—they could consent to do such an act of violence to the unanimous opinion, feelings, prejudices, if you will, of the whole Southern States, as to pass it? I go further. I ask of them what is there in the condition of the nation, at this time, that calls for the immediate adoption of this measure? Are the Gauls at the gate of the Capitol? If they are, the cacklings of the Capitoline geese will hardly save it. What is there to induce us to plunge into the vortex of those evils so severely felt in Europe from this very manufacturing and paper-policy? For, it is evident that, if we go into this system of policy, we must adopt the European institutions also. We have very good materials to work with. We have only to make our elective King, President for life, in the first place, and then to make the succession hereditary in the family of the first that shall happen to have a promising son. For a King we can be at no loss—*ex quo vis ligno*—any block will do for him. The Senate may, perhaps, be transmuted into a House of Peers, although we should meet with more difficulty than in the other case: for, Bonaparte himself was not more hardly put to it, to recruit the ranks of his mushroom-nobility, than we should be to furnish a House of Peers. As for us, we are the faithful Commons, ready made to hand; but with all our loyalty, I congratulate the House—I congratulate the nation—that, although this body is daily degraded by the sight of members of Congress manufactured into placemen, we have not yet reached such a point of degradation as to submit to suffer Executive minions to be manufactured into members of Congress. We have shut *that* door; I wish we could shut the other also. I wish we could have a perpetual call of the House in this view, and suffer no one to go out from its closed doors. The time, Mr. R. said, was peculiarly inauspi-

cious for the change in our policy which is proposed by this bill. We are on the eve of an election that promises to be the most distracted that this nation has ever yet undergone. It may turn out to be a Polish election. At such a time, ought any measure to be brought forward which is supposed to be capable of being demonstrated to be extremely injurious to one great portion of this country, and beneficial in proportion to another? Sufficient for the day is the evil thereof. There are firebrands enough in the land, without this apple of discord being cast into this assembly. Suppose this measure is not what it is represented to be; that the fears of the South are altogether illusory and visionary; that it will produce all the good predicted of it—an honorable gentleman from Kentucky said, yesterday, and I was sorry to hear it, for I have great respect for that gentleman, and for other gentlemen from that State, that the question was not whether a bare majority should pass the bill, but whether the majority or minority should rule. The gentleman is wrong, and if he will consider the matter rightly, he will see it. Is there no difference between the patient and the actor? We are passive: we do not call upon *them* to act or to suffer, but we call upon them not so to act as that we must necessarily suffer: and I venture to say that, in any government properly constituted, this very consideration would operate conclusively, that, if this burden is to be laid on 102, it ought not to be laid by 105. We are the eel that is being flayed, while the cook-maid pats us on the head, and cries, with the clown in King Lear, "down, wantons, down!" There is but one portion of the country which can profit by this bill, and from that portion of the country comes this bare majority in favor of it. I bless God that Massachusetts and old Virginia are once again rallying under the same banner, against oppressive and unconstitutional taxation: for, if all the blood be drawn from out the body, I care not whether it be by the British Parliament or the American Congress—by an Emperor or a King abroad, or by a President at home.

Under these views, and with feelings of mortification and shame at the very weak opposition I have been able to make to this bill, I entreat gentlemen to consent that it may lie over, at least, until the next session of Congress. We have other business to attend to, and our families and affairs need our attention at home—and indeed I, sir, would not give one farthing for any man who prefers being here to being at home—who is a good public man and a bad private one. With these views and feelings, I move you, sir, that the bill be indefinitely postponed.

When Mr. RANDOLPH had concluded his speech—

Mr. HOLCOMBE rose, and stated to the Chair that he wished to make some observations on the subject under consideration. I have been, he observed, so patient and persevering a listener throughout this long discussion, that I feel myself entitled to the indulgence of the House

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for a short time. The fate of the bill, Mr. Speaker, is no longer doubtful. Signs and indications, which can neither be resisted nor mistaken, have announced its destiny. It will pass, I doubt not, at least in this House, by a small but decisive majority. Such facts, on ordinary occasions, would seem to render all further discussion unnecessary, if not intrusive. But, when the policy of a great nation, in relation to one of its most important interests, is about to assume a new character, or, at least, receive additional impulse; when the manufacturing interest of this country, already under the protection of the Government, is demanding yet more efficient protection, in opposition to the remonstrances and hostility of a large and imposing minority, within and without this House, public opinion seems to require—public opinion, indeed, does require—from the friends of the new policy, the fullest exposition of the views and causes which have led to its adoption.

With such apologies, I come before the House at this late period of the debate. But, sir, I scarcely know how or where to commence my observations. The manufacturing question is utterly exhausted. The field of discussion which it presents has been so long preoccupied, so perseveringly explored, that neither fruit nor flower remains to reward the adventurer. If we refer to history for illustration, nothing can be more familiar than its examples. If to political economy, or the labors of the statist, their tables and statements, their axioms and principles, have been urged upon us, from every department of the House, by friend and foe, even to satiety.

Mr. H. observed, the general principles of the bill had been so fully discussed by others, that he would proceed at once to examine, as rapidly and briefly as possible, the principal objections which had been urged against it. The bill, Mr. Speaker, is combated on this floor by three interests essentially distinct; the agricultural interest of the South, the manufacturing interest of the East, and the general interest of commerce and navigation. For the sake of perspicuity, the objections arising out of the supposed hostility to the bill to each of these interests, will be noticed separately. The protection of the manufacturing interest is said to be hostile to the agriculture of the South. If gentlemen were able to establish the truth of this objection, the principles as well as the policy of the bill would remain, at least to me, entirely indefensible. For I have neither the right nor the disposition to advocate any measure calculated to build up the interest of one section of the Union at the expense of another. I have no personal interest which this bill can possibly promote. I support it, as a measure purely national in its character, intended to advance the prosperity, not of sections only, but of the Union; to equalize all our great interests; to promote, by its direct and necessary operation, the manufacturing interest; to promote, by the creation, or rather the extension,

of the home market, the agricultural interest; and, finally, to promote the commercial interest, by enabling the American merchant, by the abundance and cheapness of the fabrics of the manufacturer, to adventure successfully in the great markets of the world; particularly in the opening and growing markets of South America.

The gentlemen of the South must pardon me for believing, as I certainly do believe, that they mistake altogether the ultimate operation of this bill, as far as their agriculture is concerned. It is true, we can only speculate upon this point. But it has always appeared to me that, if there be one section of the Union more deeply interested than another in the friendly operation of our manufacturing policy upon its agriculture, it must be the South, inasmuch as the creation of a steady home market for its rich agricultural staples must be to the South an object of vital and lasting consideration. The European market is at best precarious. A state of war impairs, and may extinguish it. Competition, also, seriously threatens it. The Southern planter, indeed, has already found in it growing and formidable rivals. Cotton, the great staple of the South, is at this moment extensively cultivated for exportation in three quarters of the globe, in India, Brazil, and, lately, it would seem, in Egypt. And the time cannot be considered distant when it must form no inconsiderable staple of the whole series of South American Republics. Driven, therefore, as, in a great measure, it appears to me it necessarily must be driven, from the European market, where is the Southern planter to find refuge and protection, except, indeed, in the home market, which it is one of the first objects of this bill to assist in establishing! And a refuge and protection it assuredly will prove, ample and unchangeable, (the derision and infidelity of gentlemen to the contrary notwithstanding,) if we will consent to extend to it, from time to time, that legislative aid which its necessities may require, and which its great national importance will always justify. The American market, at present, consumes probably one-fourth, at least one-fifth, of all the cotton grown in the South; stimulated to excess as that culture has been by the extraordinary demands upon it, growing out of the peace of Europe. Extend, therefore, extend to the cotton manufacture of this country efficient protection, and I mistake, utterly and hopelessly mistake, the genius and enterprise engaged in it, if, before the revolution of another national period—the period of ten years—it be not able to absorb all the surplus cotton of the South,—for a part of Southern cotton, from its quality, will always find a market in Europe; provided, no more additional lands be appropriated to its culture; and the quantity is said already to trespass greatly upon correct agricultural proportions.

But, the gentlemen of the South deny that the cotton market of Europe is in danger. They

contend that they will always be able to undersell the foreign agriculturist in it. But, is not this confidence, Mr. Speaker, both dangerous and delusive? Can the labor of the slave be made as profitable as the labor of the freeman? And, if the labor of the slave be not as profitable as the labor of the freeman—and that it is not is almost universally conceded—how will the Southern planter be enabled to compete successfully, in years to come, with the millions of free agriculturists rising up and scattered over the immense and fertile regions of the Southern continent? He will be crushed by the competition; he must be driven from the market. There is, indeed, one method whereby the labor of the slave may be made more profitable than the labor of the freeman. The fact has been established; but, happily, not by the experience of this country, for the process is a dreadful one. It is by furnishing the wretched slave with the smallest portion of raiment sufficient to protect him from the inclemency of the elements, and graduating his coarse food to the minimum barely necessary to sustain, for the purposes of his labor, his miserable existence, stimulated into all its capabilities by the unceasing lash of the taskmaster. A state of society, of servitude, and suffering, not more incompatible with the public opinion of the age than unequivocally abhorrent to the sensibilities of the South.

But this bill, Mr. Speaker, is further said to be hostile to the general agricultural interest of this country. I must pass over very rapidly an objection so decisively extravagant. For where in the history of the world has the encouragement of manufactures ever proved hostile to the interests of agriculture? Look to the present age—go to the Lothians of Scotland; the rich agricultural districts of England; the kingdom of the Netherlands; the banks of the Rhine and the Elbe; the Rhone and the Seine; go indeed to every manufacturing hamlet, circle or city in Europe, and witness everywhere the refutation of this extravagant objection. Ask history—summon from the dead the Saracens of Spain, the Lombards of the twelfth century—the Genoese; the Venetian—ask the illustrious house of Medicis whether the fostering care which they awarded to manufactures, proved hostile to the agriculture of the beautiful region over which they presided? Even our own short experience amply refutes the objection.

Wherever manufacturing establishments have been successfully located amongst us, the country has, in all instances, flourished around them—exhibiting the strongest evidence of their friendly influence upon the interests of the farmer. And were we disposed to receive, with due courtesy, the representations of our constituents, our tables at this moment would be covered with memorials from our agricultural constituents—at least from those of the middle States and the East and the West, praying for the protection of the manufacturer—experience

having dissipated their early hostilities, and convinced them, by the most irresistible testimony, that in the protection of the manufacturer is embraced their own surest and best protection.

But the bill, Mr. Speaker, is said to be hostile to the interests of commerce. This, if sustained, would prove an argument entirely unanswerable. Inasmuch as it would not only render a resort to excises or direct taxation necessary to meet the ordinary expenditures of the Government, but involve seriously and lastingly the interests of the Navy. Mr. H. controverted this argument at some length. He maintained that it was opposed by the testimony of innumerable facts, and the universal experience of the commercial world—that commerce is directly promoted by whatever tends to promote national wealth and industry. That the bill, in its present shape, was as judicious a revision of the tariff as could be devised; and, consequently, that the interests of commerce and the revenue, instead of being impaired, would be promptly and decisively promoted by it. That domestic manufactures create a multitude of new wants, and furnish the means of gratifying them; and hence, consumption is increased; and hence, the loss which the revenue sustains by the lessened importation of articles manufactured at home, is more than repaired by the increased consumption of others; and that, if to these considerations be added the steady and extraordinary advance of our population, and the necessary increase of luxury, the interests of the revenue may be fairly regarded as secure from all future contingency and danger. As a striking illustration of the above positions, Mr. H. referred to the example of England, whose revenue has constantly increased, exactly in proportion as the restrictive system, for the encouragement of the manufacturing interest, has been enforced. Mr. H. contended further that a more rigid tariff than the present—a tariff for the ample and exclusive protection of the great objects of our industry, would, whatever might be its immediate operation, ultimately advance (and at no distant period too) the interests of commerce. Such a tariff, it is acknowledged, would extinguish some of the fountains of commerce—but open a fourfold number in their stead.

It is impossible for me to say, Mr. Speaker, how far the feeble encouragement which we have thus far awarded to our manufactures, has advanced the interests of the Treasury. But if numerous facts be not entirely fallacious, we have already reaped a golden harvest from the limited sacrifices which we have heretofore so reluctantly made. How is the present remarkably flourishing state of the Treasury to be accounted for, unless we refer it, partly at least, to the friendly operation of our manufacturing establishments upon our foreign commerce? The great markets of Europe are closed upon our agricultural productions. And we have lost, consequent to a state of general peace, the carrying trade of half the world. Besides, sir,

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from the cultivation of sugar within our own territories, and the lessened importation of West India spirits, the revenue, as formerly constituted, has been lessened millions. But, notwithstanding these fearful fallings-off (and fearful they would have been, and wide-spread and desolating in their influence on ordinary nations) we are steadily advancing in the career of commercial prosperity. Successive Treasury reports mock the predictions both of friend and foe. The canvas of our marine—I use, or wish to use no figure—still swells upon the remotest seas, and our flag yet streams upon every shore.

And where, I demand, are the realities of those gloomy forebodings—of those appalling pictures of national bankruptcy—of taxes, loans, and excises, conjured up, and so gloomily portrayed, to alarm the fearful and despairing politicians of 1816 and 1820? Faded away forever, and lost in the light of that general prosperity, of that energy and enterprise, of that industry and universal improvement, which is shedding a distinguishing lustre around the present moment, and illuminating, with the intensest brilliancy, the path of our future destinies.

I have spoken incidentally of the disastrous policy which we have pursued. One moment, sir, in explanation of this policy, of its origin, progress, and results. A state of universal warfare in Europe, by putting into requisition our entire commercial and agricultural energies, flooded us with wealth. Success, by intoxicating, lulled us into a delusion in relation to our real and permanent interest, unhappily as profound as it became universal and alarming. And when the shock of reaction, consequent to the sudden and universal peace which succeeded, awakened us from our golden dreams, we were absolutely astounded to discover that bread could grow in other soils, and enterprise flourish under other flags. Our great markets closed suddenly upon us, and the convulsion which succeeded forms a memorable epoch in our history, and would have proved inexpressibly jeopardous to the safety of the body politic, had not the redeeming spirit of our institutions interposed to save it from dissolution. And even at this moment, it is not difficult to perceive, that a silent but powerful cause of indisposition, if not hostility, to the manufacturing interest, arises from an undefined wish, from a lingering hope, that the circumstances of the world would again open to us the carrying trade, and the profitable markets of Europe. Thus, betraying a disposition to stake, as desperately as ungenerously, our great and lasting interests upon the contingency of foreign war, and the consequent miseries of the human race!

But this bill, sir, has excited the hostility of the manufacturing interest itself, particularly of the flourishing manufacturing interest in the East. A single remark, in reply to this objection. This hostility, ungenerous and unbecoming as it may seem, is perfectly natural. The manufacturer has perceived, and certainly the perception required no preternatural illumina-

tion,) that the ultimate operation of this bill, by bringing additional skill, capital, and competition into the business, will tend to lessen, rather than multiply, his profits. And hence his hostility. A fact worth a thousand speculations, urged, as they may be, with all the zeal and perseverance of the gentlemen of the South. Do not gentlemen perceive the dilemma to which this argument reduces them? The South combats the bill, because it will advance the price of goods, and thus operate as a permanent and oppressive tax upon its agriculture. The manufacturing interest of the East, on the contrary, combats it, because it will destroy monopoly, and reduce the price of the manufactured article below its present value, to the minimum of a living profit.

But, Mr. Speaker, is it a correct policy, to stimulate, at this moment, by additional protection, the manufacturing interest of this country? This is the more immediate question before this House? My views, in relation to it, are soon expressed and easily understood. To the manufacture of cotton and woollen goods, of iron and glass, flax, and hemp, and lead, and all other manufactures, the material of which we either possess, or can create in abundance, and which are indispensable for our security and independence in peace and war, I would grant ample, and, as rapidly as circumstances would permit, exclusive protection. Between these, and the innumerable other articles which constitute a great mass of our foreign commerce, I would draw a line of perpetual distinction. The first, as I have observed, I would protect amply and immediately. For the last, I would remain dependent upon foreign nations, or reserve as subjects for future legislation. This, sir, very briefly expressed, is the manufacturing policy which I am disposed to advocate, and of which this bill, *as originally reported by the committee*, was a fair exposition; a policy equally removed from the system of bounties and monopolies on the one part, as from the visionary and degrading system of foreign dependence and unrestricted commerce on the other. "A policy which purports not to protect the manufacture of gold and silver; not the velvets of Lyons, or the silks of Spitalfields; not the lawns of Brussels or the laces of Cambray; not the clinquallerie or the bijouterie of Paris or Birmingham, but such as we feel the want of in time of war, and such as may fairly be regarded as of prime necessity, or immediately connected with agricultural wants and pursuits."—*Professor Cooper.*

And this policy, whatever may be said or imagined to the contrary, is the growing, and is, indeed, already the favorite policy of the American people. It is an appeal to their interests, their patriotism, and experience, which, from its very nature, must be irresistible. And gentlemen may denounce the bill in the bitterest possible manner; they may originate for it, and affix to it, the most opprobrious epithets; and they surely have betrayed no lack of ca-

capacity in this respect; they may hold it up to public reproach, to public execration, as high and as perspicuously as they are able—stigmatizing it as a tax, levied most unrighteously upon the agricultural community; as “an odious monopoly,” calculated to benefit the few at the expense of the many; as a “voracious idol,” which is to swallow up all the other interests of the country; as “a vast experiment,” got up for the amusement of speculative politicians; or, finally, as “a hateful and accursed measure,” which is to bring down upon the Republic dissolution, penury, and pauperism. But, sir, in despite of this host of imaginary evils—of this storm of epithets, which gentlemen have literally showered upon the bill,—its policy, the American policy of the Speaker—will prevail—will remain fixed and irreversible—its foundation being deeply sunk in public opinion—in the confidence, favor, and affections of the people.

It is with nations, Mr. Speaker, as with individuals; and the economy of nations, it has been said during the debate, should be represented in miniature by the economy of well-regulated families. I subscribe with pleasure to the doctrine. And the whole policy of the bill before us may be beautifully illustrated by the family of an American farmer. The farmer, in all the essentials of life, of food, and clothing, is perfectly independent. Accidental circumstances—a state of war, for example—brings to him, as it brings to every one, embarrassments and privations; but it does not, it cannot, abridge materially the necessities, or even the conveniences and comforts of his household. He is independent. But, independent as he is, he is willing to continue dependent upon other countries for the finer articles of clothing, and the luxuries of his table. And such is the nature of the independence which this bill contemplates to give to this country. I have not time to extend the illustration further. Yes, sir; it is indeed with nations as with individuals. And, if there be in national economy a spectacle more gratifying than the independence of an American farmer, it will only be found in that more extended and magnificent spectacle—the independence of this great Republic—with all its interests, agricultural, commercial, and manufacturing, aided, sustained, advanced, and carried to perfection.

But England, gentlemen say, is tired of the restrictive system, and willing and anxious to abandon it. This fact, Mr. Speaker, if established, would prove a strong argument against us, inasmuch as we depend much upon the example of England for the illustration and defence of our doctrines. But what facts do gentlemen adduce, to prove that England is really tired of the restrictive system, and willing to abandon it? Is it from the occasional declamation which we hear, and to which we have been referred, in the English Parliament; or is it from the letters of English commercial agents; or from essays in English newspapers

and reviews, written designedly to mislead and bewilder other nations—particularly this country? Is it from sources like these that gentlemen have deduced the proposition that England is tired of her commercial system, (the restrictive system,) and willing to abandon it? England tired of her commercial system! Sir, it is a system so interwoven with every tissue and fibre of her existence, that the relaxation of a moment would seriously endanger its vitality. England tired of her commercial system! England is self-styled “the fast-anchored island”—“the mistress of the seas.” Let her but abandon her commercial system, and the bark—the proud, proud bark—of her destinies, will be driven, almost instantaneously, from its innumerable moorings, and soon dismantled and a wreck, with the billows of the ocean dashing over it! England tired of her commercial system! England is the Queen of Islands—the great mart of the commercial world. Let her but abandon her commercial system, and this day and generation shall not pass, before she shall become desolate and a waste, and present to history, like the Babylon of the Apocalypse, a mighty and memorable ruin, from age to age, forever. England tired of her commercial system! But why should England be tired of her commercial system? Has it failed to accomplish any of the great objects for which it was established? On the contrary, has it not rendered her distinguished and wealthy and powerful beyond all example, and beyond all calculation? We are told in Eastern fables of gold unbounded—of riches inconceivable. We read in classic history of Plutus and Midas, and the golden sands of Pactolus. But these fables—these brilliant dreams of poetry and romance—have been realized—ay, more than realized—by the commercial system of England. Her land is the land of palaces; her streams are richer than the sands of the Lydian river; and her commercial and manufacturing cities present wealth more abundant than the gold of the modern Ophir, or the multiplied productions of the hither and further India. But, with all her wealth, England is, notwithstanding, gentlemen observe, the land of debt irredeemable, of paupers, and taxation. True, sir, true; the result, however, of every cause rather than her protective system—of her ruinous and interminable wars; of the bitter blessings of legitimacy; of kings and courts and pensioners; and that all-pervading and unceasing spirit of parade and expenditure, which, by the perversion of public opinion, is regarded as indispensable for throwing a becoming splendor round the altar and the throne; and sustaining, what Burke has absurdly denominated the grace and majesty of a great people!

But, sir, the very fact that England has been enabled to accumulate her immense debt, and sustain herself under its tremendous pressure, appears to me to carry with it strong evidences of the extraordinary influences of her system upon the resources and wealth of nations.



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*The Tariff Bill.*

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There are several facts which so strongly illustrate the results of her restrictive system, that I must be permitted to present them to the House. The revenue of England has amounted, in a single year, the Speaker has informed us, to four hundred millions of dollars! An unprecedented fact in financial history. Again, sir, The annual interest of the English national debt amounts, at present, to between one hundred and fifty and one hundred and sixty millions of dollars! a sum greatly exceeding the whole interest and principal of the national debt of this country; and which, moreover, is sufficient to provide for, and maintain comfortably at one great public table, the entire population of the United Kingdom forever! But, sir, there is another fact which exhibits the resources and wealth of England to an extent still more unprecedented and extraordinary. In 1798, when the genius of the modern Cæsar was carrying the victorious arms of the French Republic over Europe; at a moment when the excessive loaning system of Pitt had excited dismay and consternation throughout the moneyed circles, and the kingdom itself seemed tottering upon the brink, if not of revolution, at least of some great convulsion—at this moment, I say, of universal despondency, the idea was conceived that the attitude of the nation might still be preserved, and the vast expenditures of the war successfully met by additional impositions upon the revenue and income of the people of England, or, in the language of the Exchequer, by creating the supplies within the year. The idea was adopted; England was thrown upon her own resources; and, in less than twenty-three years, in addition to the loans and the ordinary war taxes of the kingdom, already carried to the supposed maximum of possible payment or endurance, upwards of three thousand millions of dollars were realized from the internal revenues of the kingdom; a sum largely transcending the entire wealth dug, for ages past, from all the mines of all the world. A single remark more in relation to England. Contrast her situation, for a moment, with any other country that has pursued an opposite commercial system—with Spain, for example. England is, naturally, the land of mist and gloom; a comparatively barren island in the Northern ocean: Spain, the most delightful region in the temperate zone. Three hundred years ago, Spain was rich and powerful—so much for the industry of the Saracens: England, poor and resourceless. About this period, they exchanged commercial systems, or rather, they adopted new ones; and the result, after the lapse of three centuries, is before the world. England sways a sceptre, compared with which, the power of the Roman Cæsars shrinks to nothing. But Spain—sir, it would be as possible to give form and stature, and flesh and blood, to the ashes of her ancient kings, as to extort, by any possible means of legislation, from the entire population of the Spanish monarchy, the ordinary revenue of

England for a single year. And yet, sir, such is the result, the splendid, the magnificent, the almost inconceivable result, of a system which is so bitterly denounced, even in its least exceptionable parts, in its application to this country!

The adversaries of the bill affect to regard it as a question, whether we shall, or shall not become, a manufacturing people. This is not the question. We are already a manufacturing people; the greatest, with the exception of France and England, in the world—at least in the Christian world. We manufacture, by computation, from one hundred to one hundred and fifty millions of dollars' worth of fabrics—similar articles of which we imported, or the greater part of which we imported, before and since the Revolution, from England, France, and Holland. The monuments of our dependence upon the old world, are yet everywhere visible. Within our immediate vision stands a house (and such houses are found in all the Atlantic States) built of imported materials, and constructed probably—for in many instances houses were so constructed—by European artificers. The progress, indeed, which we have made in every department of useful industry is unexampled. And if gentlemen would but look back and observe what we have accomplished for the last thirty years, by means of our own unassisted energies; and then look forward for the same period, and reflect upon what these energies—stimulated and sustained by protective laws, and operating on the rapid development of our internal wealth and resources, may and must accomplish, a single glance at the brilliant prospect would be sufficient—at least should be sufficient to remove all doubts—to extinguish all apprehensions, in relation to the policy under consideration.

But I despair of being able to direct the attention of gentlemen either to the past or the future. They are so deeply interested with the present moment, in combating the shadows—the Gorgons and Chimeras, which imagination has conjured up from this bill, that both precedent and prospect are alike lost upon them.

But the bill is further denounced as a novel project—as a vast and wanton experiment—as a bill containing new and extraordinary principles. Sir, it is neither project nor experiment. It contains no new nor uncommon principles.

Its principles, indeed, are as ancient as history; and have been incorporated into the policy of every nation, distinguished for success in commerce or the arts. A novel project! Sir, it is the policy we combat—the unrestrictive system of modern economists, the dissolution of all tariffs—which is the real novelty of the day. A system captivating in theory, but totally inapplicable to the present state and temper of the commercial world. The age of free commerce, like the millennium of Patmos, the reign of universal peace, is evidently reserved for times less stern than ours. The temple of Janus, we may confidently predict, will be



closed for the last time, and forever, among men, before its revolutions commence. But to close my remarks—What, sir, is the real nature of the bill before us? of this “fearful, frightful bill?” of this “stamp act measure?” which is to be the precursor, if we are to credit the honorable gentleman from Virginia, (Mr. RANDOLPH,) who immediately preceded me, of rebellion and revolution? of this “firebrand,” which is about to be thrown (not indeed into the Ottoman empire, but) into a region of spirits infinitely more fiery and formidable than Turk or Greek—the South? What I demand is the real nature—the pervading spirit—the grand design of the bill before us? Sir, the full front and face of its offending, is this, and simply this, to secure to American industry, by a liberal, progressive, and protective tariff, the monopoly of our own resources—of that vast manufacturing material, which nature, in her munificence, has everywhere created, around us, in immeasurable abundance.

I have nothing further to add, but to thank the House for its indulgence, and apologize for having trespassed so long upon its time.

FRIDAY, April 16.

*African Slave Trade.*

Mr. GOVAN, from the committee to which was referred so much of the President's Message as relates to the suppression of the African slave trade, reported a bill respecting the slave trade; which was read twice, and committed to a Committee of the Whole. The bill is as follows:

*Be it enacted, &c.,* That, from and after the passing of this law, if any citizen of the United States, or any person resident therein, shall, in any port or place whatsoever, build, or in any respect fit, equip, man, load, or otherwise prepare, or cause to be prepared, or in any respect fitted, equipped, manned, or otherwise prepared, or be in any respect concerned in equipping, manning, or preparing any ship or vessel, for the purpose of being employed in the slave trade, or in the transportation of slaves from any foreign port or place to any foreign port or place whatsoever, for the purpose aforesaid, every such citizen or other person, so offending, shall, on conviction, be punished by fine not exceeding five thousand dollars, and by imprisonment not exceeding seven years; and such ship or vessel, her tackle, apparel, furniture, provisions, and cargo, on board thereof, shall be forfeited. And any citizen, or other person resident as aforesaid, who shall voluntarily serve on board such ship or vessel, or shall sail on board thereof, knowing the same to be intended to be employed in the slave trade, or in the transportation of slaves as aforesaid, shall, on conviction, be liable to be punished by fine not exceeding three thousand dollars, and by imprisonment not exceeding five years.

SEC. 2. *And be it further enacted,* That nothing in this act contained shall be construed to affect, or in anywise repeal, any acts hitherto passed for the prohibition or suppression of the slave trade; but the same acts, and every clause thereof, shall remain in full force, in the same manner as if this act had not been made.

*The Tariff Bill.*

The House then resumed the consideration of the bill for the revision of the several acts laying duties upon imports—the question being on Mr. RANDOLPH's motion for the indefinite postponement of the bill.

Mr. McDUFFIE rose and said, the unsolicited indulgence of the House, to which he was indebted for the opportunity of presenting his views on this interesting subject to-day, instead of being compelled to perform that duty yesterday, under the fatigue and exhaustion of a long sitting, had laid him under obligations of which he was profoundly sensible. The only return, however, said Mr. McDUFFIE, which I can promise, for the kindness thus shown to me, is the brevity of the remarks which I propose to offer. At so late a stage of this already protracted discussion, I cannot flatter myself with the expectation that I shall interest the attention of the House by the novelty of my arguments, but must be content to indulge the hope that I may not exhaust its patience by their prolixity.

During the progress of this debate upon the various questions which have arisen upon the details of the bill, I have studiously avoided entering into the consideration of the general principles and policy of the protecting system. And I have done so in compliance with this general rule, by which I have determined to regulate my conduct, so long as I have the honor of a seat upon this floor, never to consume the time of the House by discussing any question which is not distinctly before it for consideration. I have the less cause to regret having thus abstained on the present occasion, because it is now obvious that the subject has assumed more than its usual interest, as well from the crisis at which we have arrived, as from the peculiar circumstances under which the question is now presented to us. In all the various stages of our proceedings, we have still had before us the opportunity of reviewing our work. But the question being now on the passage of the bill, whatever decision we shall make upon it, will be, as to us, final and irrevocable. And we are called upon to give this final sanction to the measure, with the fact clearly ascertained, that it cannot be adopted but by a very small majority. Waiving, for a moment, any inquiry into the policy of protecting domestic manufactures, I put it to gentlemen to say whether prudence does not dictate, even to the most firm and independent statesman, that a measure laying very heavy burdens upon the whole community—a measure which, however we may speculate upon the subject, the people must sensibly feel—a measure which has already produced, in some parts of the Union, the most intense excitement, ought to be adopted with a bare majority of the national representatives in its favor? Sir, a Government emanating from the people, and responsible to public opinion, ought not to be indifferent to this prudential consideration. I do not

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profess to be minutely acquainted with the Parliamentary history of Great Britain; but I hazard little in asserting that no British Minister, in the height of his ascendancy, would venture to pass even a tax bill for the public service, to the extent of this, with a majority so small as that which has ordered this bill to its third reading.

This measure, all agree, is part of a system intended to produce a great and fundamental change in the policy of the country—a change, to be effected by disturbing the relations which now exist between the different portions of the Union and the different classes of society. That such a change as this can be produced by legal regulations, operating, of necessity, as a tax upon the people, without exciting a strong feeling of popular discontent, not to say indignation, is an expectation which gentlemen delude themselves if they indulge. An acute and lively sensibility to every invasion, by Government, of the rights of property, is one of the strongest characteristics of freedom in modern times; and there is no people on earth more distinguished for it than the citizens of the United States. I therefore submit it, respectfully, to the consideration of the friends of the manufacturing interest themselves, whether there is not serious danger that a measure of this character, enacted by a lean majority, will produce a reaction among the people, which may result in the entire prostration of the system they are so anxious to foster and extend.

In soliciting the attention of the House to a very brief examination of the policy of this measure, it is far from my intention to enter into a formal dissertation upon the general principles of political economy. This is neither the place nor the occasion for such dissertations. My observations shall be confined to a practical examination of the question, in reference to the actual state of things in this country, assuming, as a basis, a few palpable and obvious principles, which have long ceased to be questionable in the estimation of the most enlightened philosophers and statesmen of Europe.

Whilst, sir, on the one hand I unequivocally deny, what is maintained by some, that manufacturing industry is, in itself, more profitable than agricultural or commercial, I distinctly disclaim the notion, maintained by others, that the pursuits of agriculture are more profitable than those of manufacture or commerce. All such notions are utterly erroneous and visionary, and are founded upon a misconception of what it is that constitutes wealth, and of the principles which regulate the distribution of capital and labor. What is wealth? The wealth of a nation consists in the abundance of those articles which administer to the necessities, the comforts, and the luxuries of life, according to the existing habits of society. It results from this, that a combination of the products of agriculture and of manufacture is essential to the wealth of a civilized community, such as exists in the United States. With

the most unlimited abundance of the products of agriculture, we should be poor without the products of art; and with an equal abundance of manufactures, we should perish without the productions of the soil. It is conceded, on all hands, that we abound in articles of the latter description; and the only question to be debated is, how can we most advantageously obtain the former? Shall we fabricate them ourselves, or import them from abroad? To the common understanding of mankind, it would seem to be a self-evident proposition, that the cheapest mode of obtaining them is that which a nation ought to pursue, as it is certainly that which individuals would pursue, with a view to the promotion of their own interest. But here we are met with the argument that commerce is a barren and unproductive pursuit. A very few remarks will serve to refute this notion, which, when examined, will be found to be a mere verbal proposition. It is true that commerce does not produce either the one or the other of the elements of wealth, but it communicates value to both. Without commerce, the surplus production, both of individuals and nations, would be utterly valueless. Of what value, for example, are the surplus productions of the manufactories of Manchester and Birmingham, either to us or to those who produce them, until, by the agency of commerce, they are brought to our shores and distributed to the consumers? It would be precisely as correct to say that their entire value is derived from commerce, as to maintain that its operations are unproductive. Either proposition would be equally absurd. While, therefore, I view any proposition, which asserts the superior productiveness of one of the great divisions of human industry over the others, as being not only erroneous, but absolutely unmeaning and unintelligible, I admit that the wealth of a community depends upon the maintenance of a due proportion between them. And the question for a practical statesman to determine is, how is this proportion to be maintained, so as to produce the greatest aggregate benefit to the community?

On this question, if I may be permitted, and I scarcely know whether I ought to venture upon it, I will lay down a general principle, upon the authority of Adam Smith, who, notwithstanding the terms of sweeping condemnation which have been applied to his speculations, has done more to enlighten the world on the science of political economy, than any man of modern times. He is the founder of the science. All that has been since done is but a development or modification of the principles he established. What, then, is his great elementary principle? That labor and capital, if left to receive their direction from individual sagacity, will naturally seek, and speedily find, the most profitable employments. And this is founded upon the idea that individuals are more capable of forming a judgment as to what will promote their pecuniary interests, than the most enlightened Government can possibly

be, from the very nature of things. This, however, is denounced as empty theory! Every thing, it seems, which does not result from legislation, from the officious restrictions of Government, is to be regarded as the operation of a ruinous theory. But, sir, I put it to the common sense and common observation of every gentleman in the House, whether this theory does not rest upon the most steady and immutable and powerful principles of human action—principles which never cease for a moment to actuate the great mass of every community. What stronger instinct belongs to the character of man than that which impels him to improve his condition? And what conceivable obliquity of perception can prevent him from discovering, upon a survey of the various pursuits which are open to him, that from which, with his peculiar capacities, he can derive the greatest profit? I can very well imagine the case of a rude and barbarous people, unaccustomed to the enjoyments of civilized life, in which a Government, despotic in its character, and rising much above the existing state of intelligence in the country over which it holds dominion, might produce great and beneficial changes in the pursuits of society by legal regulations. The Government, for example, which should conduct a people from the hunter to the shepherd state, or from the latter to the agricultural, would undoubtedly confer the most signal benefits upon the community. Such a change, however, could be accomplished only by a gradual improvement of the people, and by giving them a taste for comforts and luxuries to which they were unaccustomed. But, I will venture to say, that there is not a people on the face of the earth to whom a policy of this kind would be so utterly inapplicable as to the people of these United States. What, sir, is their character? Is there a nation more acute, ingenious, or enterprising, more keen and sagacious in perceiving the avenues to profit, or more prompt and energetic to pursue them? Do they need the direction of this Government to indicate the way to individual prosperity? Shall we undertake to enlighten the capitalists of Boston as to the most profitable mode of investing their disengaged capital? They would laugh to scorn the folly and impotence of such officious dictation. It will scarcely be alleged that our people have not a taste for the products of manufacture. For all the productions of human industry—for all the articles, at least, of which we propose to encourage the domestic fabrication, the people of this country have perhaps too keen an appetite. Indeed, the complaint of the friends of this measure is, that they import them in too great abundance. No legislation, therefore, is necessary to create a demand for those articles. In such a state of things, the general principle is indisputably true, that capital and labor will naturally flow into the most profitable channels of industry, without the control of Government.

But, to this general principle I admit there is an exception, which I will candidly state. And here I will take leave to remark, that, anxious as I am to defeat this measure, which I believe would be ruinous to some portions of the Union, and beneficial to none; yet I would not, if I could, accomplish this object by stating any principle which I believe to be false. An elevated morality, which regards the establishment of correct principles as more important than victory, should characterize our deliberations here. I admit, then, that when from the revolutions of trade or the progress of society a crisis has occurred in which a great and fundamental change must take place in the distribution of the capital and labor of a nation, a wise, moderate, and cautious legislation may aid in effecting the change, and is even necessary to effect it in the manner most beneficial to the community. But, sir, if we attentively examine the principles upon which this proposition is founded, we shall perceive that useful legislation on this subject is confined to very narrow limits, and that there is much greater danger of doing harm by transcending these limits, than by abstaining from legislative interference altogether.

What, then, are the principles upon which the interference of Government can be justified, in such a crisis as that to which I have alluded? In the first place, the habits of a community, operating with something like the force of laws, will induce an adherence to accustomed pursuits, after they have ceased to be profitable. But the principal ground upon which the protecting policy can in any case be justified, is the inability of infant manufacturing establishments to sustain a successful competition with their foreign rivals, even after the country has reached the point at which the domestic article can, with the experience of a few years, be fabricated cheaper than the foreign. And here, sir, the limit of the protecting system is distinctly indicated. It must be satisfactorily shown, that the protection sought is only temporary; and that, after a reasonable time is given to acquire experience and skill, and bring the domestic manufactories to perfection, they can furnish the domestic fabrics cheaper than similar fabrics could be obtained from abroad. Now, if we apply these principles to the actual protection heretofore extended to our domestic manufactures, it will be seen that the Government has already fulfilled its obligations to them in the amplest manner. Gentlemen have argued this question as if the manufacturing interest of the country had been unjustly assailed by some foreign power, and Congress had manifested the most cruel indifference to their sufferings. But is there the slightest foundation for either of these assumptions? The only power with which our manufacturers have had permanently to contend, is the superior natural advantages of the foreign artisan; and I will now call the attention of the House to the protection which our estab-

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lishments have actually received from this Government. I venture to assert, that since the commencement of the restrictive system in 1807, the manufacturers of this country have enjoyed an unusual and artificial stimulus from our legislation; and I am perfectly satisfied that it is this extraordinary stimulus that has given them that voracious appetite for prohibition which nothing, it seems, but the absolute protection of all rival articles can satiate.

Manufactures not protected! Why, sir, during the restrictive system, our commerce with the manufacturers of Europe was almost entirely annihilated, and our own manufacturers had little short of an absolute monopoly of the home market. And here, sir, let me call the attention of these practical gentlemen, who so contemptuously discard every theory but their own, to the effect of this restrictive system, upon the distribution of the capital and labor of the country. During the five years of commercial restrictions which preceded the war with Great Britain, when there must have existed in the country a superabundance of surplus capital, suddenly disengaged from commerce, we find that manufactures, notwithstanding they enjoyed the advantages of a prohibitory system, made but a very slow and gradual progress. If gentlemen would duly consult this portion of our experience, I think it would at least admonish them to have a little patience. They would see that, under any possible protection, which legislation can provide, particularly in time of peace, when there is no extraordinary consumption of manufactures, these must, in the very nature of things, advance by slow degrees. It cannot be otherwise, unless we ascribe to an act of Congress the magical power of forcing on manufactures beyond the natural capacity of the country, either to produce or to pay for them. Yes, sir, it would be well for us to reflect that it is much more easy to diminish the consumption than to increase the production of manufactured articles, by prohibitory legislation. Such was undoubtedly the effect of the restrictive system. But the measure which gave the strongest impulse to our manufactures, was the war of 1812. And here it is worth remarking, that a war with England gives a stimulus to manufactures, which no other kind of protection can possibly afford. For, at the same time that it cuts off our trade with the nation that principally supplies us with manufactures, it compensates the diminished consumption of them by the people, by the extraordinary consumption of the Government. At the close of the war, the system of double duties was continued till 1816, when the existing tariff was enacted for the avowed purpose of sustaining those establishments which the war had brought into existence, against the extraordinary influx of foreign manufactures, resulting from the universal restoration of peace in Europe. And while I contend that the tariff of 1816 afforded a most liberal protection to the manufacturing inter-

est, I most perfectly accord in the policy which dictated that measure. I distinctly recognize the principle, that, wherever large investments of capital have been made in consequence of a state of things produced by the necessary acts of the Government itself, the Government is under a moral obligation to extend to the interests, thus created, a reasonable protection.

But, sir, what is a reasonable protection in such a case? Can it be expected that the manufacturing interest is to be maintained permanently in the same degree of prosperity that it enjoyed during the war? That it is to be exempted from a participation in that general distress which has pervaded the whole community? This would not only be unreasonable, but utterly impracticable. Nothing but a perpetuation of the war could have accomplished so much for the manufacturers. What, sir, was the light in which the tariff of 1816 was viewed by the liberal statesmen who then supported it? It was intended merely to mitigate the shock which our manufacturing establishments must experience, in passing from a state of general war to a state of general peace. More than this was neither expected nor claimed by the manufacturers themselves. As the persons then engaged in the business had nobly sustained the war, gratitude mingled with justice in the policy adopted. But no intelligent man was so visionary as to expect that, when the ordinary channels of trade, so long obstructed, were suddenly opened, there could still be maintained, by artificial means, the same demand for domestic manufactures as before. It was apparent that many of the existing establishments must go down, and that neither the wisdom nor the folly of human legislation could possibly prevent it. And, sir, such has been the fact. Eight years of probation have elapsed since the passage of the existing tariff, and, if policy or humanity required it of us, it is now too late to relieve the distresses of those manufacturers who made their investments during the war. Those of them who have been enabled to sustain themselves till this time, under the extraordinary pressure of the four or five years immediately succeeding 1816, when the country was almost literally overwhelmed with the surplus manufactures of foreign establishments, can certainly maintain themselves now, when foreign commerce is rapidly returning to its ordinary channels, and contracting within its proper limits. Those who have passed through the furnace, do not require to be protected from the ordinary heat of the sun. And it is a fact that they now stand firm, and constitute the most prosperous interest of the country. As to those who were swept away during the disastrous period to which I have alluded, they are irretrievably destroyed, and beyond the reach of our remedies, unless, indeed, we had the power of producing a resurrection by an act of legislation.

It is obvious, then, that the protection of these establishments, which originated in the

war, is not the object of the present bill. It does not even assume this modesty of pretension. Doctrines are now advanced, which never entered into the conception of those who advocated the tariff of 1816—doctrines which, though maintained by gentlemen who have waged a special war of sneers and sarcasms against the theories of political economy, throw into the shade the boldest theories of the French economists. We are now told that it is the duty of a paternal Government not only to protect existing interests against extraordinary reverses which it has contributed to produce, but to create new manufactures and new pursuits, by the mere energy of legislation. The people, it is said, are absolutely idle and in wretchedness, for the want of employment; and a gentleman from New York, (Mr. Wood,) who often edifies the House by his philosophical speculations, has told us, if I understood him correctly, that 80 per cent. of our population are actually in idleness for the want of pursuits to which their labor can be applied. These three millions of people, who are thus destitute of employment, as the gentleman has demonstrated by statistical tables and mathematical calculations, (the obvious and palpable facts to the contrary notwithstanding,) are to obtain employment by the notable expedient of an act of Congress!

[Mr. Wood here explained. His argument was, he said, that thirty-three per cent. of our population produce no more than fifteen per cent. ought to do. Thirteen and a half per cent. only of our population, he calculated, was absolutely employed in productive industry, and in this proportion was included the army, navy, and public officers, amounting to three and a half per cent.]

I am glad, resumed Mr. McDuffin, that the gentleman has removed an erroneous impression from my mind as to the *extent* of his argument. But, even modified and limited as it now stands, it will be difficult to make it pass current for a *practical* argument. Is it in the power of tables and calculations to make any man seriously believe, in opposition to the evidence of his own senses, and to the result of his general observation and knowledge of the country, that one million of our population are not only idle, but destitute of employment? Shall we be told, in a country like this, abounding with almost interminable wilds of fertile lands, that a tithe of the people are suffering for the want of something to do? Sir, there are innumerable avenues to employment in this country, and if any man were to make his complaint to me that he was without employment, I could tell him simply *to go to work*. That is the obvious remedy, a remedy in the reach of every one; and, if it were more generally pursued, there must soon be an end of this wretched and delusive dependence upon the quackery of legislation for employment. Sir, I boldly assert, that there is not a single individual in the vast extent of this Republic, that

cannot readily obtain, not only employment, but such an employment as will enable him to improve his condition. This is the only country on earth where a common laborer, of industry and enterprise, can, in the course of an ordinary lifetime, besides comfortably supporting himself and his family, leave to his children an inheritance of real estate: and, with these facts staring us in the face, we are required to believe, on the authority of tabular statements, that the people can only be saved from suffering and discontent, by the adoption of this measure, to provide them with employment. The gentleman from New York, by way of confirming his general conclusion, has stated that the wages of a laborer in his vicinity, is only twelve and a half cents a day. In answer to this, I can only say to the gentleman, that, if his distressed neighbors will only make a transition from Long Island to any other point in the whole Union, even the most unfavorable, I will be responsible for their obtaining fifty cents per day. But, as the cry of distress has been reiterated until it has made a strong impression upon the country, I beg leave to recur, with a view to illustrate and enforce them, to some remarks which I offered during the discussion of the duty on cotton bagging. I believe the causes of the disease, and the tendency of the proposed remedy, to be equally misconceived, as to some portions, at least, of the Union. I stated, on the occasion to which I have referred, that the distressed of the country, such as they were, resulted from the change of circumstances occasioned by passing from a state of war to a state of peace, in connection with the excessive issues of bank paper, which threw forward and increased the pressure of the evil. During the war, there was a considerable proportion of our population—those engaged in the military service of the country—who consumed the products of the grain-growing States, but produced nothing. All those States which were near the theatre of war, found a ready market, and high money prices for their grain. To them the war was therefore a source of prosperity, and peace was, in one sense of the word, regarded as a calamity. And whence do we now hear the loudest complaints of distress? Whence come the most strenuous demands for the passage of this bill? From the very points of the Union which enjoyed the advantages of a war demand and war prices for their produce—New York, Pennsylvania, and the Western country. You cannot define the boundaries of any State more accurately, than you can trace the limits of the region of country favorable to this tariff, by the positions of our armies in the late war, and the multiplication of banks during that contest, and since its termination. Pennsylvania and the Western States supplied the Northwestern army, and I believe the Government paid as high as one hundred dollars per barrel, at the theatre of war, for flour purchased in Ohio; a State now unanimous for this tariff. New York,

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every one knows, was in the immediate neighborhood of extensive and permanent military operations, and supplied numerous armies with provisions. Now, it happens that the very States I have enumerated, have been most afflicted with the curse of banks that did not pay specie, (a delusive expedient to perpetuate the war prices and war prosperity,) and have also been most earnest and persevering in their appeals to this Government for protection. New England, and the Southern States, on the contrary—States which sustained the privations of the war without the same mitigating circumstances, and from necessity regulated their enjoyments by the rules of a severe and self-denying economy, are now to be subjected to an onerous taxation—and for what? Not to relieve the other States from positive distress, but to restore certain interests in them, to the state of artificial prosperity which they enjoyed during the war. During the whole period of that contest, the Southern country was deprived of a market for its great staples, and there was nothing in the military operations of the Government to compensate the loss. Even if the people had devoted themselves to the growing of grain, there were no armies in the field to consume it, and that, like their cotton and tobacco, would have remained without a market. In this state of things they not only ceased to make any progress in wealth, but were compelled to contract their accustomed expenses, and use an economy before unknown to them, to provide a decent maintenance for their families. These habits made the return of peace, to them, the harbinger of prosperity. It is a dispensation of justice resulting from the very nature of things, that those who suffer the greatest privations in war, shall be least affected by the changes resulting from the restoration of peace.

But, sir, I will venture to assert, that the Middle and Western States have, at this moment, as large a share of the means of positive enjoyment as any other portion of the Union. Their distresses are relative, and in a great degree imaginary. It is not what they *are*, but what they *were*, that causes the prevailing discontent. The reduction of an inflated currency has reduced the nominal price of property; and the man who, a few years past, estimated his wealth at fifty thousand dollars, and now finds it only twenty-five, complains of his distresses as though he were in want of the necessaries of life. I admit that the Western people are *embarrassed*, but I deny that they are *distressed*, in any other sense of the word. Where is the evidence of actual suffering? In some of the Western States, I am informed, they have no poor laws at all, and such a being as a pauper is scarcely known. Regarding, therefore, the aggregate enjoyments of the whole community as the true criterion of national happiness, I should select the Western States as the part of the Union where the highest degree of prosperity prevailed. Indeed, sir, I believe

there is not on the face of the earth a region of country of equal extent, where so few are suffering from poverty, and where the means of comfortable subsistence so abundantly reward the toil of the laborer. It is not distress, I repeat it, but discontent, that has excited this rage for creating wealth by legislation. To prove this, I will advert to another standard of prosperity, referred to, very unfortunately, I think, for his own purposes, by the honorable gentleman from New York, to whom I before alluded. He told us that the prosperity of a nation was indicated by the increase of its population; and then favored us with a beautiful disquisition on the comforts of matrimony, and the duty of a Government to promote it. I perfectly accord with these views of the honorable member; but I must be permitted to say that, according to the criterion to which he has referred, there is no other nation so prosperous as the United States, and no part of the Union so prosperous as that from which we hear so much about their distresses. And if the honorable member wishes to promote the cause of matrimony, I would advise him to send his twelve and a half cents per day laborers to the Western country. What, sir! a country which doubles its population in ten years, call upon the Government to relieve it from distress by creating new employments! The thing will not bear examination. The historian will scarcely be credited, in future time, who ventures to record it. Permit me to call the attention of the House to a few facts, illustrative of this part of the subject, which I am sure will not be disputed. In the States where the public lands are in market, you can purchase land of the first quality for one dollar and fifty cents—one dollar and twenty-five cents, says a gentleman near me—when land of the same quality is worth, in some parts of the Union, fifty dollars per acre. This single fact speaks more than volumes of declamation on the subject of popular suffering. Indeed, it may be safely asserted, paradoxical as it may seem, that the imaginary distresses of the Western country proceed from the very abundance in which they possess the primary aliment of national wealth. What is their complaint? Not, as one would suppose, the scarcity, but the superabundance of the necessaries of life. And here, I will observe, that nothing, in my opinion, has contributed more to the existing derangement in the elements of wealth in the Western States, than bringing the public lands into market injudiciously, and without any regard to the existing demand. The inevitable tendency of this policy, by overstocking the market, is, to reduce lands to the minimum price; and if that were fixed at fifty cents per acre, the land would command no more. The consequence is, that the people purchase large quantities of productive lands, which have all the constituents of value, but scarcity. And, because they have not every thing else in proportion, they are discontented and restless. And I will avail

myself of this occasion to declare, that I will never give my vote to bring another acre of the public lands into the market, but under the strongest conviction that there is a fair and natural demand for it. Our very system converts our land into a mere drug in the market, and the people into speculators.

I will now take the liberty of addressing a few words especially to the Representatives of the West, on the subject of their own interests. A subject upon which I certainly will not presume to instruct them. But I am sure they will excuse a friendly admonition, when I state the particular topic to which it relates. I am well assured that the permanent prosperity of the West depends more upon the improvement of the means of transporting their produce to market, and of receiving the returns, than upon every other subject to which the legislation of this Government can be directed.

On measures of this description I have heretofore given them my earnest and cordial support. Most of my colleagues, and many others, who represent the Southern portion of the Union, have pursued the same course. As for myself, nothing will induce me to change my views or conduct on the subject; but I submit it to the dispassionate consideration of the Western gentlemen, whether there is not danger, that, by urging upon us a system which we believe to be oppressive, they will alienate the kind feelings of the portion of the country to which I have alluded, and lose its co-operation in relation to that system of internal improvements, which, in my opinion, is of more importance to the West than all the tariffs that can be passed in half a century.

I will also present another view of certain interests of the West, which are intimately connected with the portion of the country I have the honor to represent.

Gentlemen are aware that a very profitable trade is carried on by their constituents with the Southern country, in live stock of all descriptions, which they drive over the mountains and sell for cash. This extensive trade, which, from its peculiar character, more easily overcomes the difficulties of transportation than any that can be substituted in its place, is about to be put in jeopardy for the conjectural benefits of this measure. When I say this trade is about to be put in jeopardy, I do not speak unadvisedly. I am perfectly convinced, that if this bill passes, it will have the effect of inducing the people of the South, partly from the feeling, and partly from the necessity growing out of it, to raise within themselves the live stock which they now purchase from the West. It is at least certain that more will be lost in this trade, than is gained in that of cotton bagging.

The name of Hamilton has been introduced into this discussion, as a sanction to the heterogeneous provisions of this bill. I wish to God, sir, he were living and present, to vindicate himself from so unjust an imputation! Recur-

ring to his recorded opinions, what does he recommend? That a heavy duty should be laid upon unmanufactured wool? The very reverse. He recommended not only that it should be imported duty free, but that a bounty should be given upon the importation. If you really desire to promote and protect domestic manufactures, it is our true policy to encourage, instead of discouraging, the importation of the raw material, so that the manufacturer may obtain it as cheap as practicable. But instead of this, you absolutely lay almost a prohibitory duty upon the raw material. Upon what can this be founded, unless upon the erroneous and unjustifiable policy of buying up different interests to insure the passage of the bill? I presume I may use this language without offence, as some gentlemen have distinctly avowed that they view this measure as a compromise of interests; or, in other words, that one provision is to be regarded as the consideration for another. But, sir, I do most earnestly protest against this principle, as one of the most dangerous that can be introduced into our legislation. Each provision should stand upon its own separate and distinct merits, and if it cannot be sustained in this way, it ought to be abandoned. But, in relation to this article of wool, it is a mistaken notion to suppose that you really promote the interest, even of the wool-grower, by laying a heavy duty upon foreign wool. The only effectual mode of benefiting the wool-grower, is to increase the domestic manufacture, and, consequently, the demand for wool; but you defeat this object precisely in the degree that you increase the duty on the raw material. Great Britain has recently made an experiment upon this very subject, which is not unworthy of our attention. The Chancellor of the Exchequer, with a view to reconcile the landed interest to a considerable increase of taxes, laid a duty of six pence per pound on foreign wool, which had, theretofore, been subject to a nominal duty only. The consequence was, that the export of woollen manufactures was rapidly reduced, the market for domestic wool, and consequently its price, were diminished, and all the interests connected with wool were seriously injured.

I will now invite the attention of the House to a few remarks as to the practical operation of this bill upon the community. Whatever may be its effect upon domestic manufactures, I speak advisedly when I say it will operate as a tax upon the people to the extent of at least four millions of dollars. And whether the proceeds of this shall go into the national Treasury or into the pockets of individuals, the thing about which there can be no doubt, is, that the tax will be paid by the people. If it shall operate merely as a revenue measure, it will not benefit the manufacturers, and is subject to the objection that it is unnecessary, and therefore oppressive, taxation. If it shall operate to exclude foreign manufactures, it is liable to the still greater objection of being not only an



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oppressive, but an unproductive tax. The people pay, but the Government does not receive. In point of fact, it will probably, for a short time, operate partly as a productive, and partly as an unproductive, tax; partly as an increase of the revenue, and partly as a bounty to the manufacturing interest. But we are advised to submit quietly to these burdens, and to be satisfied with the assurance that we shall, at some future time, obtain the domestic manufacture as cheap as we can import the foreign. Let us examine this idea for a moment. And I would remark, at the threshold of the examination, that it is not sufficient for gentlemen to show that the articles for which they claim protection can be made at home *as cheap* as they can be imported from abroad under our system of revenue duties; but they must further show they can be made as cheap as the foreign articles could be imported if there were no revenue duties levied upon them. Suppose, for example, that the gentlemen could clearly make out their case, that all the manufactures we import can be made at home precisely as cheap as we *now* import them, but no cheaper; and, to make the illustration more complete, suppose that they actually were made at home, and that the foreign importation had ceased. What would be the result? It is true we should obtain the articles as cheap as we do now, but we should lose the whole revenue of the country derived from imposts, and be compelled to resort to other sources of revenue. Even, therefore, in the case supposed, the country would sacrifice above fifteen millions of dollars per annum at the shrine of this anti-commercial system. And this is the strongest case which can be supposed in favor of domestic manufactures. The supposition that they can ever be made as cheap as the foreign fabrics could be imported free of duty, is too extravagant to be indulged for a moment. And yet this supposition, chimerical as it is, must be realized before any benefit can result to the country from this measure to compensate the great and palpable sacrifices which it involves.

Looking to the operation of this measure upon the different classes of the community, it may be fairly stated as its general result, that it will sacrifice the laboring classes for the benefit of the capitalists. And when I say capitalists, I include as well those who employ capital in some of the products of agriculture, as in manufactures. You propose to protect, by duties, not only manufactures, but wool, hemp, and even grain. Ridiculous as the duty upon this last article is, it serves admirably to illustrate the genius of the system.

Although the manufacturing interest makes the most prominent figure in this scheme of protection, the question is no longer between the manufacturing and agricultural interests, but between all those who produce more than they consume of the articles subject to duty, and those who purchase that surplus production. From this it is obvious, that but a very small

part of the community can enjoy the benefit of this system, which operates as a permanent tax upon the remainder. As to the manufacturers, we know their number is exceedingly small in comparison with the aggregate of our population. But the smallness of the number of farmers who can be benefited by this bill, is not so obvious. There exists a delusion on this point, which is easily removed. It is supposed that the great mass of the farmers will participate in the bounties provided. But every practical observer must know in relation to wool, for example, that a great majority of the farmers can produce no more than they consume in their own families. It will be the more wealthy farmers, therefore, who will realize the advantages, such as they may be, of this compromise with the manufacturers, while the small farmers and the whole class of mere laborers will be compelled to bear the burdens of the system, such as they certainly are, without the slightest equivalent. No man has pretended, no man will venture to assert, that the price of labor will be increased by this measure. That, sir, the thing which most deserves encouragement, is left unbountied to its fate. I do pronounce it, that this is a combination, not only of the few against the many, but of the wealthy against the poor; we take from those who have not, and give to those who have. I speak with studied precision when I say, that those who consume what they do not make, are taxed for the benefit of those who make what they do not consume. These are the true antagonist powers of this system.

The experience of Great Britain, of whose prosperity we have had such extravagant descriptions, furnishes a most striking and conclusive illustration of that tendency of the protecting system which I am now considering. It is true, that Great Britain is a nation of vast power and resources. To the eye of a distant beholder, she undoubtedly presents a splendid spectacle. But history, while it records the achievements of her policy and her arms, says nothing of the condition of her people. If you but look beyond the dazzling surface, you will see a vast population pushing their industry to the utmost extent of their physical power, for a bare subsistence, to say nothing of the great proportion (about one-sixth, I believe, of the whole number) who are absolutely or partially dependent upon public charity. Yes, sir, the fact is so universally true in that country, that the wages of labor never rise higher than to the point at which the laborer can barely subsist and perpetuate his race—that it is laid down by the British writers on the subject as a settled principle of political economy. If, from disease or other casualty, a laborer is unable to work for a week, he runs the risk of perishing. It never enters into the calculation of the British laborer to improve his condition in life; and it is in the power of very few, even to lay up a pittance for the future. Such is the condition of the great body of the people of Great Britain,



who have been characterized by the Speaker as the happiest people on earth, and held up to us for our special admiration.

But, sir, even if the prosperity and happiness of Great Britain were much greater than they are, upon what principle of sound reasoning can they be ascribed to her system of commercial restrictions? I am ready to admit, if gentlemen desire it, that her prosperity is derived mainly from her manufactures; but I unequivocally deny that these have been fostered into existence by the restrictive system. A few palpable facts of her history will render this apparent. Which of her manufactures have been the great sources of her prosperity? Those of cotton, wool, and iron, undoubtedly. Will any gentleman venture to say that these have derived their prosperity from the protective system? Where, sir, is the nation that ever for a moment held a competition with Great Britain in cotton fabrics, and against whom, therefore, protection was necessary? From the first moment of its existence, this manufacture in Great Britain, like the raw material in our Southern States, set all competition at defiance. Neither ever needed or received the protection of Government. Both have succeeded, because the countries in which they respectively flourish are peculiarly adapted to their production. The same remarks are true (though not so strikingly true) in relation to manufactures of wool and iron. On the contrary, those manufactures which have been forced into existence by artificial stimulants, are regarded by all the enlightened statesmen of the present day as so many obstacles to British prosperity. This is emphatically true in relation to the manufactures of silk. In fact, sir, you might as well tell me that the muscular energy of a giant is derived from the fetters he sunders into atoms, as that the prosperity of Great Britain is derived from her restrictive system.

I will now offer a few remarks upon another view of this subject, to which our attention was called by the Speaker. He told us that this Government ought to pursue, as nearly as practicable, such a policy in relation to the different portions of the Union, as each of those portions would respectively pursue, if existing as a separate confederacy. Let us then inquire what would be the relative situation of the principal subdivisions of the Union, if each were free to legislate for itself. And I will first examine the probable condition of that subdivision which the Speaker himself represents—the Western country. If that region were separated from the rest of the Union, and formed a distinct confederacy, how would it stand in relation to this very question? It would derive its supplies of foreign manufactures principally through the Atlantic States. I presume it would, because it has done so heretofore, and it would continue to be the interest of the people to do so. What would be the result? What power would they have in regulating the imposts

upon foreign merchandise, and how could these imposts affect their interests? It is obvious that they would have no agency in regulating the tariff of duties, and would yet have to pay, indirectly, the amount of those duties, in the increased price of imported articles they would consume. In a word, the Western States would be tributary to the Atlantic States. When, therefore, the gentlemen from the West called upon us to adopt this measure for their benefit—a benefit which I am sure they will never realize—they required us to do what they could not themselves do, even if separated from the rest of the Union, unless indeed they would cut off all commercial intercourse, not only with Europe, but with the Atlantic States also. But how would the principle laid down by the Speaker operate upon a Southern portion of our Union? If that were a separate confederacy, (which God forbid that it ever should be!) what power could restrain it from pursuing its own most obvious and decided interests, by having a free and unrestricted intercourse with Europe? And when we are about to be deprived of this natural right, and to see our interests immolated at the shrine of a voracious idol, which devours every thing, and produces nothing, it ought not to be a subject of surprise that we oppose the measure as a direct invasion of our most essential rights. And, if I may be permitted to give an opinion as to the true interests of another portion of the Union, I would say, most confidently, that, if New York were a separate State, this would be a most unwise and ruinous policy for her to pursue. For, if there be a State in the Union more interested in foreign commerce than any other, it is New York; and I will add, if there be one more interested than all others, in the cotton trade of the South, that, also, is New York. Yes, sir, that commerce which the majority of her representatives now seem to condemn, is the true source of her prosperity and greatness; and there is no portion of that commerce so important as that which this measure is calculated to jeopardize, if not to destroy—the carrying trade of the South. Without this, the city of New York, the great emporium of the Union, would be deprived of half its wealth, and shorn of half its splendor. And here, sir, I will say a word or two in relation to a view of this subject, which seems to have great weight with the gentlemen who represent the interior of the State of New York. They believe that, by rearing up manufactures, they will create a market for their grain: but, do they not perceive, that commerce furnishes a market for this article, much more extensive than they can reasonably anticipate from the manufactures they can create? The city of New York alone, nourished and sustained by the very commerce which this bill is calculated to destroy, creates, by its consumption, a more extensive market for the grain of the interior than will be created by all the manufacturing establishments which this system will bring

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into existence in half a century. Indeed, this idea of obtaining a market for grain, by forcing manufactures into existence—an idea which has made a very strong impression upon the farming interest in the Middle and Western States—can never be realized, but to a very moderate extent. In the existing state of the arts, manufactures are made principally by machinery, which consumes no grain—so that it would not, perhaps, be going too far to say, that the agents directly and indirectly employed, by commerce, in supplying the country with a given quantity of foreign manufactures, consume as much of the products of the soil, as would be consumed by the agents who would be employed in the fabrication of the same quantity of domestic manufactures.

While considering the operation of this measure upon the several divisions and interests of the Union, I hope I shall be excused for repeating, with a view to further illustration, an idea which I advanced at an early stage of the discussion upon the details of this measure, the correctness of which, however, has been since repeatedly denied. I stated, and I now deliberately repeat it, that the cotton of the Southern States, the great source of our prosperity, constituting one-third of the whole export of the Union, has reached that critical point in the competition with foreign cottons, when any material derangement of our commercial relations with Great Britain must inevitably expose us to the hazard of losing the market of that country, at least to a very considerable extent. If we cease to take the manufactures of Great Britain, she will assuredly cease to take our cotton to the same extent. It is a settled principle of her policy—a principle not only wise but essential to her existence—to purchase from those nations who receive her manufactures, in preference to those who do not. You have, heretofore, been her best customers, and therefore it has been her policy to purchase our cotton to the full extent of our demand for her manufactures. But, say gentlemen, Great Britain does not purchase our cotton from affection, but interest. I grant it, sir, and that is the very reason of my decided hostility to a system which will make it her interest to purchase from other countries than our own. It is her interest to purchase cotton, even at a higher price, from those countries which receive her manufactures in exchange. It is better for her to give a little more for cotton, than to obtain nothing for her manufactures. It will be remarked, that the situation of Great Britain is, in this respect, widely different from that of the United States. The powers of her soil have been already pushed very nearly to the maximum of their productiveness. The productiveness of her manufactures, on the contrary, is as unlimited as the demand of the whole world. She, therefore, has no choice of pursuits. Her surplus capital and labor must be directed to manufactures, or remain idle and unproductive. A

demand for her manufactures is, then, from the very necessity of her condition, the primary consideration, to which every other must be subservient in the regulation of her commercial relations. To say, therefore, that she will continue to purchase our cotton, because she can get it a little cheaper than other cottons, after we have ceased to purchase her manufactures, is to suppose that she will be utterly blind to her own necessities; that she will, in fact, abandon, where it is most indispensable, that very policy which the friends of this bill now call upon us to adopt, in a spirit of reckless speculation, without considering that our circumstances are the very reverse of those which render such a policy necessary to Great Britain. In fact, sir, the policy of Great Britain is not, as gentlemen seem to suppose, to secure the *home* but the *foreign* market for her manufactures. The former she has without an effort. It is to attain the latter that all her policy and enterprise are brought into requisition. The manufactures of that country are the basis of her commerce; our manufactures, on the contrary, are to be the destruction of our commerce. And yet, in a spirit of blind and indiscriminating imitation, we are called upon to follow the example of Great Britain, by adopting a policy which will produce a result precisely the opposite of that which she has experienced of her policy; or, in other words, we are required to adopt, in deference to British wisdom, a system the very reverse of that which British policy would pursue, under the same circumstances? It cannot be doubted that, in pursuance of the policy of forcing her manufactures into foreign markets, she will, if deprived of a large portion of our custom, direct all her efforts to South America. That country abounds in a soil admirably adapted to the production of cotton, and will, for a century to come, import her manufactures from foreign countries. Under these circumstances, it is obvious that Great Britain will use every effort to stimulate the industry of South America, by the various commercial advantages she has it in her power to present, and to make up, by this new trade, the loss she will have sustained in being deprived of ours. But I must hasten to bring my remarks to a conclusion, lest I should exhaust that indulgent patience which, I fear, I have already taxed too severely. A few words, and I shall have done.

It would be some consolation to me, sir, if I could believe that the heavy impositions, which must operate so oppressively upon the part of the Union I have the honor to represent, would produce an equivalent benefit to other portions of the Union. If my constituents must be sacrificed, it would in some degree soothe their injured feelings, if they could have this excuse, at least, for quietly submitting to their fate, hard as it is, and unjust as they believe it to be. But even this humble consolation is denied us. We are doomed to suffer, under a clear conviction that our sufferings will administer no relief to

the distresses, whether real or imaginary, of any portion of our fellow-citizens. We are to be made the victims of a system "which not enricheth them, but makes us poor indeed"—a system which wages war, not against our enemies, but our friends; not against the hostile regulations of other countries, but against the advantages of our natural position in the world, and the munificent bounties of an all-wise Providence—a system which has originated in discontent, and must inevitably end in disappointment. Against such a system I do most solemnly protest, as a palpable invasion of those rights and interests which I am charged to defend and protect. And I do beseech its advocates, as they regard the principles of justice, the interests of the Republic, or the mutual good will of its members, to pause before they give this bill the irrevocable sanction of their final vote. If, however, they should pass it, even with a majority of a single vote, I shall, as bound by my allegiance, submit to it as one of the laws of my country. I have endeavored, with zeal and fidelity, to discharge my duty as a Representative. I trust I shall never be found wanting in my duty as a citizen. I must take leave, however, to say one parting word to the authors of this measure; I thank God that, if mine is to be the suffering, theirs will be the responsibility.

When Mr. McDUFFIE had concluded—

Mr. MARKLEY, of Pennsylvania, rose, not, he said, to make a speech upon the bill, although such had originally been his intention; but he thought, after so long a discussion, the House must be ready and anxious to take the final question on the bill. He therefore moved a call of the House.

After the call was concluded, the doors were closed; four members only were found to be absent.

Mr. STEWART then moved to dispense with all further proceedings in relation to the call: his motion was carried.

Mr. TREMBLE, of Kentucky, rose to call for the previous question. He said he thought the present a proper time to finish the debate. It was known that one member was attending, contrary to the advice of his physicians, and two or three others contrary to the advice of prudence. He admitted that some courtesy was due to those who wanted to speak, but much more, he thought, was due to those whose sense of duty had brought them to the House from sick beds. He was one of those who had intended to present his views of the subject before the final question was taken, and some things had been said on yesterday which called for a reply from the friends of the bill; but he had predetermined to waive his right to do so, and hoped that gentlemen on both sides would consent to close the discussion. No tariff had ever been debated in cold blood, and the old members would support him in saying, that the debate on the present bill was marked with more temperance than on former occasions.

He hoped it would terminate in the same spirit of moderation and forbearance that had marked its progress. He assured the House that he made the call under a sense of duty, but in the full spirit of deference for those who might oppose it.

The call was sustained—101 members voting in favor of, and 98 against it.

Mr. RANDOLPH rose and demanded another count.

The CHAIR, in pursuance of a rule of the House, then appointed Messrs. RANDOLPH and TAYLOR as tellers; and the members on each side of the question were counted, by passing between the tellers, and returned as follows: In favor of the previous question 108, against it 95.

So the House determined in favor of the previous question.

M. WEBSTER then rose. He said he had been waiting in the House for several days, laboring under severe indisposition, in order to make a motion in relation to this bill, which was of vital importance to his constituents; but as he had not yet had an opportunity to do it, he moved that the bill be ordered to lie upon the table. Upon this question he requested the yeas and nays.

The yeas and nays were accordingly ordered; and the House refused to lay the bill on the table—yeas 98, nays 110.

The previous question was then put, to wit: Shall the main question be now put? and passed in the affirmative—yeas 110, nays 97.

The main question was then put, to wit: Shall the bill pass? and passed in the affirmative—yeas 107, nays 102, as follows:

YEAS.—Messrs. Adams, Alexander of Tennessee, Allison, Barber of Connecticut, Bartley, Beecher, Bradley, Brown, Buchanan, Buck, Buckner, Cady, Campbell of Ohio, Casedy, Clark, Collins, Condict, Cook, Crafts, Craig, Durfee, Dwight, Eaton, Eddy, Edwards of Pennsylvania, Ellis, Farrelly, Findlay, Forward, Garrison, Gazlay, Harris, Hayden, Hemphill, Henry, Herkimer, Holcombe, Houston, Jenkins, Johnson of Virginia, J. T. Johnson, F. Johnson, Kidder, Kremer, Lawrence, Letcher, Little, McArthur, McKean, McKim, McLane of Delaware, McLean of Ohio, Mallary, Markley, Martindale, Marvin, Matlack, Matson, Metcalfe, Miller, Mitchell of Pennsylvania, Mitchell of Maryland, Moore of Kentucky, Morgan, Patterson of Pennsylvania, Patterson of Ohio, Plumer of Pennsylvania, Prince, Richards, Rich, Rogers, Rose, Ross, Scott, Sharpe, Sloan, Sterling, Stewart, Stoddard, Storrs, Strong, Swan, Taylor, Ten Eyck, Test, Thompson of Kentucky, Tod, Tomlinson, Tracy, Trimble, Tyson, Udree, Vance of Ohio, Van Rensselaer, Van Wyck, Vinton, Wayne, Whitman, Whittlesey, White, Wickliffe, James Wilson, Henry Wilson, Wilson of Ohio, Wood, Woods, and Wright.

NAYS.—Messrs. Abbot, Alexander of Virginia, Allen of Massachusetts, Allen of Tennessee, Archer, Baylies, P. P. Barbour, J. S. Barbour, Bartlett, Bassett, Blair, Breck, Brent, Burleigh, Burton, Cambreleng, Campbell of South Carolina, Carter, Cary, Cobb, Cocke, Conner, Crowninshield, Culpeper,

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er, Cushman, Cuthbert, Day, Dwinell, Edwards of North Carolina, Floyd, Foot of Connecticut, Foote of New York, Forsyth, Frost, Fuller, Garnett, Gatlin, Gist, Govan, Gurley, Hall, Hamilton, Harvey, Hayward, Herrick, Hobart, Hogeboom, Hooks, Isaacs, Kent, Lathrop, Lee, Leftwich, Lincoln, Litchfield, Livermore, Livingston, Locke, Longfellow, McCoy, McDuffie, McKee, Mangum, Mercer, Moore of Alabama, Neale, Nelson, Newton, O'Brien, Owen, Plumer of New Hampshire, Poinsett, Randolph, Rankin, Reed, Reynolds, Rives, Saunders, Sandford, Sibley, Arthur Smith, Alexander Smyth, William Smith, Spaight, Spence, Standefer, A. Stevenson, J. Stephenson, Taliaferro, Tattnall, Thompson of Georgia, Tucker of Virginia, Tucker of South Carolina, Vance of North Carolina, Warfield, Webster, Whipple, Williams of New York, Williams of Virginia, Williams of North Carolina, and Wilson of South Carolina.

*Ordered,* That the title be "An act to amend the several acts imposing duties on imports," and that the Clerk do carry the said bill to the Senate to ask their concurrence therein.

MONDAY, April 19.

*Address of Ninian Edwards.*

The SPEAKER communicated to the House an address of Ninian Edwards, late a Senator of the United States, from the State of Illinois, complaining that injustice has been done him in a report from the Secretary of the Treasury, accompanying the correspondence between the Treasury Department and the banks in the different States, upon the subject of the deposits of public money in said banks; exculpating himself, and also preferring certain charges against the said Secretary.

[The "Address" is of great length, and is dated at Wheeling, Virginia, April 6, 1824, and was sent back from that place, Mr. Edwards being then on his way to the City of Mexico, as minister to that new republic. The substance of his long "Address" was condensed in the conclusion to six specific accusations, prefaced and terminated with some exculpatory and deprecatory remarks, and with the bold avowal that he was the author of certain publications, known as the "A. B. plot," in which the same accusations had previously appeared. The following is this conclusion:]

I regret to have to say to your honorable body, that both the state of my health, and the want of time, absolutely compel me, most reluctantly, to close this investigation of Mr. Crawford's well-timed statement against me. In this situation, I beg leave to refer you, for further facts, of which I might, under more favorable circumstances, fairly and successfully avail myself, to a few of the publications under the signature of "A. B.," herewith transmitted.

Avowing myself the author of these publications, and, with the exception of a few unimportant typographical errors, and a mere verbal inaccuracy in regard to the time of a certain report's being made, reasserting, before your honorable body, and the

nation, that the facts they allege are substantially true, I do most respectfully solicit that they may be taken as a part of, and be printed with, this communication. In order to strengthen my claim to this indulgence, combining all the rights of defence, of accusation, and of asking for investigation, which can entitle me, as a citizen of the United States, or an officer of their Government, to appear before your honorable body, I do expressly state:

1. That the honorable William H. Crawford, Secretary of the Treasury, has mismanaged the national funds.

2. That he has received a large amount of uncurrent notes from certain banks, in part discharge of their debts to the United States, contrary to the resolution of Congress of 1816.

3. That, being called on by a resolution of the House of Representatives to state the amount of uncurrent notes which he received from these banks, he has misstated it, making it less than it really was.

4. That he has, in his report to the House, misrepresented the obligations of these banks, or some one of them, at least, and predicated thereon an indefensible excuse for his conduct in receiving those uncurrent notes.

5. That he has acted illegally, in a variety of instances, by making and continuing deposits of public money in certain local banks, without making report thereof to Congress, according to law; and

6. That he has, in several instances, withheld information and letters, called for by the House, and which it was his duty to have communicated.

*His Oath.*—Let it speak for itself.

For specifications of these statements, I offer the publications under the signature of A. B., above mentioned, and this communication; and, for proof, I offer that which they respectfully refer to.

All this I do defensively; for, if the facts stated be true, no rational man can doubt that they must weaken, at least, the force of Mr. Crawford's statements against me.

I will not charge him with bad intentions in any of those acts. It is more properly the duty of others to inquire into and judge of that matter. I do not ask for an investigation of his conduct. Such a request ought more naturally to be looked for from himself. But I will say, that if, being an officer of the same Government under which he holds his office, I have wilfully and maliciously misrepresented him, in the six foregoing allegations, it is a misdemeanor that would prove me unworthy of the office I hold. I invite him, or any of his friends, to make this charge against me, pledging myself to waive all notice, and, with all the disadvantages of absence, to submit to an investigation thereof by either or both Houses of Congress, and to abide by the decision thereupon. If this proposition is declined, I trust we shall have no more canting about an "A. B. plot." As to myself, I fear not the consequences of any fair investigation, for I know I shall be able, whatever may be the result, to justify myself to the nation. And never having obtained any office by the slightest sacrifice of independence, I never will owe the holding of one to reluctant forbearance, or the courtesy of my enemies.

I will only add, that, if any attempt should hereafter be made, meanly to take advantage of my absence, by those who have forbore to attack me when I could have had an opportunity of defending

myself, I must beg of your honorable body, and the nation, to suspend your opinions, and to be assured that there shall be no avoidable delay in vindicating myself. I have in reserve much matter of defensive accusation, and should most certainly have invited your attention to the report concerning the Receivers of Public Moneys at Huntsville, and other matters of no less importance, had time permitted.

NINIAN EDWARDS.

WHEELING, VA., April 6, 1824.

Some desultory conversation took place, as to the proper course to be taken with this communication, between Messrs. A. STEVENSON, FLOYD, CUTHBERT, KREMER, TRACY, McLANE, of Delaware, and WARFIELD.

Mr. FLOYD moved to lay the memorial on the table.

Mr. TUCKER, of Virginia, moved that the address and accompanying papers, be printed, desiring to see the whole truth, whatever it might be. Mr. WARFIELD called for the reading of the address, and the Clerk proceeded accordingly to read it.

The reading had continued about half an hour, when, the address not having been gone more than half through, Mr. WARFIELD said he was satisfied as to the character of the paper, and did not wish the time of the House to be taken up with it longer, as it would obviously require considerable time. Mr. BUCHANAN inquired what the object of the memorialist was, or whether he requested any thing specifically of the House? Mr. MOORE, of Alabama, required that the reading should proceed.

The reading having been finished—

Mr. TUCKER, of Virginia, said, he was free to declare, now that he had heard the memorial read, that the style and temper in which it was written, manifested so much personal and party feeling, that he should then withdraw his motion to print, but for one consideration. It is well known, he said, that the distinguished individual whose character is assailed in that memorial, stands in a very peculiar relation to the public, and that every thing which concerns his character, in the smallest degree, will be regarded with the liveliest interest by the people of this country. Sir, we are bound to represent, not merely the interest of the people, but their feelings too; and they will not be satisfied if this accusation is prevented from going abroad to the world. This was all I meant, in saying I wished the whole truth to come out. I was far from meaning to imply, that any gentleman was not willing to have a full investigation of the subject. Mr. T. remarked that, although that House ought not to be made the vehicle of private calumny and detraction, nor be the theatre on which individuals, however elevated they may be, should settle their controversies, yet, when it was recollected how sensitive, how tremblingly alive the people were to every thing which affected the characters of those who stood in the same relation to the public as the officer who was

now accused, he thought the whole of the charges brought against him ought to be published. If these charges deserved the character of malignity imputed to them by his worthy colleague, (Mr. FLOYD,) and he was not now disposed to contest the matter with him, or to give any opinion on the subject, that malignity would recoil upon its author. Mr. T. said he had unshaken confidence in the character and integrity of the distinguished officer who had been thus attacked, and he had no doubt that on this, as on all other occasions, the accusations against him would prove to be false and unfounded. He must, however, persist in his motion for printing.

Mr. WEBSTER observed, that in the present delicate affair, the first duty of Congress was, to look to its own course, and preserve its own dignity. He had no idea that this House was to be converted into an arena on which prominent political men were to carry on their personal contests; or a mere instrument, through its power to order papers to be printed, of giving publicity to any thing they might choose to write against each other. If the gentleman from Virginia, who had made the motion to print, did not intend to follow up that motion by any other, he should certainly oppose it—as the only legitimate end of printing papers in this House was for information of members of the House, and not to spread it through the nation. But, if any motion should be made for a committee of investigation, it should have his support; and if the present motion to print, was only preparatory to such a measure, he should not object to it, though he could not consider it as very necessary.

Mr. FLOYD, of Virginia, said, that when he made the motion to lay the memorial on the table, he had done so, because it was the usual course with such papers; but, since it had been read, he was disposed to have it examined, not, he said, because it purported to be a defence, but because it contained specific charges against one of our officers. Mr. F. said he was opposed to the printing of the memorial, until it could be examined by a committee, and determined, on more reflection and investigation, what ought to be done. This was due to the charges made. As to the rest of the extraordinary production, said Mr. F., it cannot be animadverted upon in terms suitable to it. The charges appear to contain nothing but a reiteration of those made by the A. B. conspirators; nor did I think the author of that plot would have ever had the unblushing effrontery to acknowledge himself such. This Iago, however, has chosen to acknowledge the fact, and reiterate the charges formerly made, and seems to think, that his late station as Senator, and his recent appointment by the President, as Minister Plenipotentiary to Mexico, will give a more imposing character to the plot, and that, under the sanction of his own name, with the authority of office, that may now be effectuated, which the anonymous writer failed to do.

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Every member of the last Congress, said Mr. F., will recollect that two several committees were appointed to investigate this matter; and every one then seemed to consider that attack as the most infamous conspiracy that was ever formed against the reputation of any man. I am unwilling that this House should become the theatre for any political juggler, or the arena where individuals can come to adjust their disputes. I have too high a respect for the dignity of the House, and, I trust, for myself; but, as there is a specific charge, that may be attended to, I am willing to investigate it; though I will not admit that, because he has been a Senator, is now a Minister to Mexico, and enjoying the confidence of the President, that, therefore, his statements are to be received as he would wish them. The writer has not justified himself or defended himself from charges, which he says were made against him, but has cast imputations upon all who seem to have been in the way of his original design, which has been pursued with pertinacious malignity. Were this man's request allowed, and his calumnies printed by the House, would it not be right to receive and print also the defence of Mr. Dickins, or any other citizen? Why has he left the subject of his own defence, to attack the character of Mr. Dickins? That could not have been necessary. Mr. Dickins has a right to be heard as well as a Minister to Mexico, as, I trust, every other American citizen has, without regard to station, and when the two former committees of this House investigated this matter, his character was admitted by all to be good, and entirely unexceptionable. I, too, have heard this of him ever since I have been in Congress, though I should not know him, were we to meet in the street; and, all agree, that he has discharged his official duties with honesty and attention, which is, in my opinion, no small recommendation.

Why has this Minister to Mexico, who enjoys the confidence of the President, left the subject of his defence, and referred to the subject of the illicit introduction of slaves by a man who was the friend of Mr. Crawford? Is he to be accountable too for his friend's conduct? I do not know any thing of that matter, said Mr. F., but this I know, that one of the gentlemen who suffered by that attack, of which that memorial reiterates a part, has been here demanding reparation for wrongs suffered in that affair; I know him, too, to be an honorable man, and that he will have that matter adjusted. His presence here was known, I presume, to the Minister to Mexico, and he should then have taken up this part of his subject. One would think, said Mr. F., that the object of this political Caliban was more extensive than merely to do himself justice, or his scope would not have been so broad. The A. B. conspirator, however, ought not to have again attempted to consummate the object of his wishes, after he had, in such a sort, succeeded in obtaining the appointment of Minister to

Mexico and the President's confidence. He had obtained the reward of so much toil, so much industry, and so many dangers, and he ought to have left behind him the honest reputation to those who had it, as it no longer proved a barrier to his march to the Mission to Mexico and the President's favor.

Look at it. Can any man believe, for an instant, from the manner in which this memorial is brought up, that it is not a deliberate design to operate upon those feelings which, at this time, so much agitate this country and this House? How all that volume could be written from Wheeling, on the Ohio River, with a reference to so many public documents, is more than I can comprehend, and more than I believe. There are two or three charges specifically made, and yet, from his absence, he wishes the public to suspend an opinion in regard to him, should matters turn out unfavorable to him, until he can get back. Why then make them? There are, said Mr. F., several persons in the Government, in whom I have great confidence—but I have more in myself; and I wish these charges to be investigated again, and justice done, though I do not doubt it will result, as did the inquiry by the former committees, which I had thought would have prevented all similar attempts; and, considering the question which now occupies the public, and his success in obtaining office, I did not think that one of those conspirators would have had the audacity, in his own name, to avow himself, and show his unblushing front to this House and the nation; though, if my memory does not fail me, I saw in the newspapers, whilst his nomination was before the Senate, a statement which I believed was authorized by himself, that he was not the author of that plot. Had he been known as the author of that infamous conspiracy, I think I hazard little in saying, that the Senate would not have confirmed his appointment. Mr. F. concluded by moving that the memorial and papers be referred to a select committee.

Mr. LIVERMORE suggested to Mr. TUCKER the propriety of withdrawing his motion to print the papers, that a decision might first be had on their reference to a select committee.

Mr. TUCKER, of Virginia, observed, that he thought the gentleman from Massachusetts (Mr. WEBSTER) somewhat mistook the character of an order to print. Mr. T. did not consider that, in doing so, the House lent its sanction, in any degree, to the document ordered to be printed. It was merely to enable the members to examine a subject at leisure, and understand it thoroughly. Here is a very long memorial, containing facts and argument, and much of it subtle argument too, of which it is impossible to judge without a deliberate examination. After it is printed and examined, it may appear that further inquiry is proper—or, it may seem to be unnecessary. I thought it premature, at this time, to give an opinion on this subject. But, as my colleague seems not unwilling to

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engage in the investigation, and has moved a reference of it to a select committee, my object of giving it publicity will be attained, and I withdraw my motion to print.

Mr. RANKIN wished that the communication of the Secretary of the Treasury, to which the present document refers, might be referred to the same committee.

Mr. WRIGHT moved to amend Mr. FLOYD's motion, by adding, "and to print it."

Mr. FORSYTH said he thought much more importance was given to this subject than it deserved. It was an ordinary question to print a long statement for the use and information of the House, and not for the public. He was never unwilling to print any paper of public interest. During the many years he had been a member of this House, he had never seen any evil arise from printing papers. Whether the House ordered the statement to be printed or not, it would doubtless be circulated in the public newspapers, and he had no doubt it was prepared for that purpose. It was intended, he presumed, as a sort of legacy to the country, by the author, who was going as Minister to Mexico—as a mark of his gratitude for the honor of his appointment. This honorable gentleman, said Mr. F., was a Senator in Congress when the former investigations took place by committees of this House; the committee gave him an opportunity of disclosing all he knew of the allegations, and, after a full examination, reported that they were fully satisfied of the groundlessness of the charges. It was the duty of this Senator, as a public man, at that time, and while he was a member of the Senate of the United States, to hold up to the public every defaulter in office with which he was acquainted; but, instead of doing this, he waits until his appointment to a foreign mission is confirmed, and when he is about to leave the country, sends forth this precious paper, pretending to be a defence of himself, but in reality an attack on a high officer of the Government, to be circulated after he shall have been beyond the reach of any call on him to substantiate his charges. He does not ask us to go into an investigation of the subject; and Mr. F. believed that the writer did not expect the House would take any notice of his communication. That was not the writer's object; he only requests the House to put it on its files—to print it, when he shall not be here to make his charges good. This, I believe, said Mr. F., is the third impeachment exhibited against the Secretary of the Treasury, during the present session of Congress: one of them is by this honorable gentleman; another was by a certain John Henry—a name of evil omen in this country, said Mr. F.—[some member here said to Mr. F., that the person's name was *Robert Henry*—I am sorry for it, said Mr. F., as their designs were so similar, it is a pity their names were not the same. Mr. F. concluded by saying, he hoped the communication would be printed as a matter of course, and

that the subject might go to a select committee for investigation.

Mr. WRIGHT, of Ohio, (who was not a member of Congress when the former investigation took place into the subject of the bank correspondence, and the alleged suppression of a paragraph in one of the letters,) said that, since he had taken his seat as a member, he had bestowed much attention on the report of the committee of investigation, and he was perfectly satisfied with the correctness of the conclusion which the committee had come to; but he was willing it should again be investigated, and therefore withdrew his motion to print the statement of Mr. Edwards.

Mr. SANFORD thought a matter of so much importance should be referred to a committee composed of a member from each State; that is, twenty-four members.

This motion was rejected almost unanimously, and a committee of seven members was ordered.

Mr. McARTHUR moved that the committee be appointed by ballot, instead of by the Speaker; which motion was also negatived.

Messrs. FLOYD, LIVINGSTON, WEBSTER, RANDOLPH, TAYLOR, McARTHUR, and OWEN, were appointed the said committee.

On motion, the committee were then empowered to send for persons and papers.

TUESDAY, April 20.

*Claim of Beaumarchais.*

The SPEAKER, by leave, presented the memorial of Amelia Eugenia de la Rue, heiress of M. De Beaumarchais, in relation to her claim for repayment of moneys advanced by her late father for the service of the United States.

Mr. TAYLOR expressed a hope that the memorial would receive the early attention of the House.

Mr. TUCKER, of Virginia, chairman of the committee to whom was referred the papers in relation to claim, after some observations on its importance, gave notice that he should, on Tuesday next, call up the consideration of the committee's report on the subject.

*Address of Ninian Edwards.*

Mr. FORSYTH submitted the following resolution for adoption by the House:

"That the President be officially informed that this House has ordered an investigation of the memorial presented to this House on the 19th instant by Ninian Edwards, lately appointed Minister to Mexico; that the said Ninian Edwards may be instructed not to leave the United States before that investigation has taken place."

The question of consideration of this motion being called for, (a previous, but not usual question,) was taken; and there were: for considering the motion 61; against considering it 84.

So the House refused *now to consider* the proposition.

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Mr. MOORE, of Alabama, then rose, and said that, connected with the subject, he would take occasion to say, that the gentleman from Virginia (Mr. FLOYD) was absent from the House this morning, when that part of the Journal was read which announces the names of the persons appointed on the committee to consider the memorial of Mr. Edwards. As he believed that, from considerations of delicacy, the gentleman from Virginia would not wish to be a member of the committee, Mr. M. took this mode of apprising him of the fact, that he might have an opportunity of asking to be excused from serving upon it.

Mr. FLOYD rose, and requested the gentleman from Alabama, if his allusion was to him, to repeat his statement. Mr. M. accordingly, in substance, repeated his statement.

Mr. FLOYD then said that, in a case of delicacy concerning him, (Mr. F.), he had hoped that the gentleman from Alabama was the last man in this nation to undertake to make suggestions, and he did not think his doing so showed any delicacy on his (Mr. M.'s) part. I am, said Mr. F., the sufficient judge of my conduct in such a case. Perhaps the gentleman from Alabama may be acquainted with some circumstances of the A. B. plot, so called in the discussion last winter, and subsequently. If I know any thing of myself, however, I am capable of doing justice to every individual in this nation, whose conduct may be presented to me, in my official capacity, for examination. When a specific charge is made against a public officer, after the friends of that officer, and myself by name, have been called upon, through that paper which is the channel of every thing but truth, to propose an investigation, I thought it became peculiarly my duty to investigate the charge. What I think of the accuser in private life is for me to consider, and does not touch my public duty. Mr. F. here alluded to a friend of the gentleman from Alabama, (as we understood him,) who had for several successive sessions called upon this House for the impeachment of a judge, whom, it seemed, he had previously attempted to bribe, &c.; and here, he said, were charges one, two, and three, asserting certain accusations against the Secretary, and calling for an investigation. This, surely, was sufficient reason for an investigation being pressed by those thus called upon. The devil himself might prefer charges here—it would not change our opinion of that personage—but it would surely be a particular reason for an investigation by those who are implicated. So far as the gentleman from Alabama is concerned, said Mr. F., perhaps there may be other reasons for consulting motives of delicacy. When I do want suggestions of that sort, I should think very differently of myself from what I have been accustomed to do, were I to be obliged to go to him for them.

The SPEAKER said there was no question before the House, and the suggestion of the gentleman from Alabama having been made and answered, the conversation must drop.

Mr. MOORE then rose, and moved that the gentleman from Virginia should be excused from serving on the committee.

The question of consideration being called on this motion, the mover withdrew it.

Mr. MOORE then asked to make a remark in reply to Mr. FLOYD; but the SPEAKER declared it to be out of order. Mr. MOORE wished to know if it would be in order to ask leave of the House to speak in reply? The SPEAKER thought not.

Mr. MOORE then renewed his motion in the following words, with a view in this way to have an opportunity of addressing the House:

*Resolved*, That JOHN FLOYD, a member of this House, be excused from serving on the committee appointed yesterday, on the subject of the memorial of Ninian Edwards.

The question being taken on considering this motion, it was decided in the negative, almost unanimously, and so this matter ended.

WEDNESDAY, April 21.

*Address of Ninian Edwards.*

Mr. McDUFFIE offered the following:

*Resolved*, That the Clerk of this House be directed to furnish the President of the United States with a copy of the memorial of Ninian Edwards, recently presented to the House, containing certain charges against the Secretary of the Treasury."

Mr. McDUFFIE said that he regretted that the subject had been presented to the House at all; but, since it had, he thought the facts should be submitted to the President of the United States, that he might take such course as he may deem proper in this matter, it being a dispute between his own officers.

Mr. SAUNDERS accorded in the propriety of the resolution, and suggested an amendment, that the President be informed of the organization of a committee, by this House, to investigate the case. This course, he said, would not surprise the President. If the President should choose to recall Mr. Edwards, he would have it in his power to do so. He might be permitted to say, that the course of Mr. Edwards was not the same as that pursued towards Mr. Hamilton, then Secretary of the Treasury, in 1794. Mr. Giles called for information, and boldly offered and supported his motion, and did not throw charges into the House, and leave them to pursue them if they could. The same course ought to have been pursued by Mr. Edwards in this case, instead of which he has departed hence on his way to a foreign station, and thrown his charges back upon those he has left behind.

Mr. WEBSTER said he hoped he might be excused for making a single remark, without going farther. It was obvious that the committee, which had been appointed, had no time to make any progress in investigating the charges of Mr. Edwards, at this session. He hoped the House had confidence enough in the committee to agree to the motion he should now make,



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which was, to defer acting upon this motion until to-morrow morning. With this view, Mr. W. moved that the motion lie on the table.

This course was agreed to, without a division.

THURSDAY, April 22.

*Address of Ninian Edwards.*

Mr. FLOYD, from the committee to whom was referred the memorial of Ninian Edwards, vindicating himself and accusing Mr. Secretary Crawford, pursuant to instructions of the committee, communicated the following minutes of its proceedings, viz :

"The committee, to whom was referred a communication from Ninian Edwards, report the following minutes of their proceedings to the House of Representatives :

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Present, all the members of the committee.

*Voted*, That the committee ought to proceed to make inquiry into the matters contained in the said memorial, and connected therewith.

*Voted*, That, for the purpose of such inquiry, the attendance of the said Ninian Edwards upon the committee, to be by them examined, is requisite ; and that his attendance be accordingly ordered.

*Voted*, That the chairman do inform the House of the foregoing resolutions of the committee ; and inasmuch as it is suggested that the said Ninian Edwards is about to leave the United States on foreign diplomatic service—

*Voted*, That the chairman do move the House that information of said communication, of the votes of the House thereon, and of the foregoing resolutions of the committee, be communicated to the President of the United States."

The latter proposition having been put into the form of a motion by Mr. TAYLOR, of New York, and the question being upon agreeing thereto—

Mr. FORSYTH, of Georgia, said he had the honor, a day or two ago, of submitting a motion to the House on this subject, the object of which he had not an opportunity to explain, in consequence of a call for the question of consideration. The object I had in view, said Mr. F., was the same as that which the committee seem to have had in contemplation in their report of this morning. I understand this to be, to prevent any collision between the orders of the Executive branch of the Government and those of the Legislative. I understand the committee to have determined on calling Mr. Edwards before them, to ascertain what he has to say upon this subject, in addition to what he has stated in his memorial. As a matter of courtesy, that being the case, it is proper for the House to give notice of the fact to the President of the United States, that the individual in question might not seek to escape, under the plea of Executive orders, from the investigation which he has himself asked of this House to institute. The object of my motion was the same with that now before the House, and it appears to me that the form of mine was more proper than the form of that which has been submitted.

What interest has the President of the United States in knowing what are the votes of any committee of this House? All that is necessary for him to know is, that this House has taken up the subject for investigation. We do not ask from him any thing to enable us to exercise our rightful power in this matter, and our motives for acting are therefore of no importance to the due information of the Executive. The simple annunciation of the fact is sufficient. Under these impressions, Mr. F. moved to strike out all the above, after the word "Ordered," and insert, in lieu thereof, his motion, in the following words :

*Resolved*, That the President be officially informed that this House has ordered an investigation of the memorial presented to this House on the 19th instant, by Ninian Edwards, lately appointed Minister to Mexico ; that the said Ninian Edwards may be instructed not to leave the United States before that investigation has taken place.

Mr. RANDOLPH, of Virginia, said, as the course pointed out by the committee would attain all the objects which the gentleman from Georgia had in view, he did not see why the change should be made. If the gentleman will attend to the terms of the proposition before the House, said Mr. R., he will see that there is nothing in it which, in the smallest degree, compromises the proceedings of this body ; that we are acting by our own inherent power ; that it is not proposed to call on the Executive Department, though a co-ordinate branch of the Government, for any ancillary aid. We are acting by our own virtue and power ; but, having done so, we have thought it proper to advise the Executive branch of the Government, that he might take such order on the matter, in his own exclusive sphere, as to him may seem fit and proper. And what more can we do ? I hope the amendment will not be adopted, but that we shall decide on this motion, and give to the chairman an opportunity to make a further motion, which he is authorized by the committee to make.

Mr. TAYLOR, of New York, said it was true that, on a former occasion, when the gentleman from Georgia presented his motion, he (Mr. T.) did call for the question of consideration upon it. The reason why he had done so, was, that the subject had just been referred to a committee without any special instruction. The first question, it was apparent, which would present itself to that committee would be, Does the memorial contain sufficient matter to justify proceeding in the investigation of its contents ? That question had not been, in any manner, decided, when the gentleman from Georgia offered his motion. It was not until last night that the committee came to the determination that it was proper that they should proceed in their inquiry. This, Mr. T. said, was necessarily a previous question to be determined. For, if the committee had been of opinion that the subject was not, for any reason, fit to be inquired into, it would not have been proper to

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give to the President the intimation in question. After the committee had decided the preliminary question, the next step was to require the attendance of Mr. Edwards. The House will perceive that the committee propose to apply to the Executive for no power, but to notify him of the decision requiring the attendance of Mr. Edwards, as a fit regard for that comity and respect which is due from this House to a co-ordinate branch of the Government. Mr. T. believed that the notification of both these decisions of the committee was necessary, for the purpose of apprising the President of the reasons of this House for requiring the attendance of an individual who was known to be absent on diplomatic services, &c.

Mr. WEBSTER, of Massachusetts, did not see that any difficulty was presented by this question to the House. Here, said he, is a communication referred to a committee of this House, in the course of investigating which, the personal attendance of an individual, understood to have been recently despatched on a foreign service, is found to be necessary, and is required. All that the committee aim at, therefore, is to inform the Executive of so much as to show that business before us requires the personal attendance of one whom he has despatched, or is about to despatch on foreign diplomatic service. This is all that is proposed by the resolution now before the House.

Mr. KREMER, of Pennsylvania, rose, and observed that, before he voted on this question, he must know whether the committee can wait for the return of the person proposed to be sent for. He knew not, for his own part, where Mr. Edwards was to be found. The session was now near its close, it would be unnecessary to send for him, if, when he came, the House had adjourned, or the committee was not prepared to go on. If we do send to Wheeling, when our messenger gets there Mr. E. will be gone, and we shall be pursuing him from town to town, nobody knows how long. If it was in order, he should move that the resolution lie on the table.

The motion to lay the subject on the table was decided in the negative, by a large majority.

Mr. McLANE, of Delaware, said the objection he had to the matter now before the House, would apply as well to the resolution of the gentleman from Georgia, as to the recommendation of the committee. He could perceive no necessity for the further interposition of the House, and it might be improper to call for it. We have referred the memorial to a committee, said he, with what propriety it is not for me now to say, and have vested that committee with full power to send for persons and papers. We could give no greater power. Under the authority already possessed, the committee were authorized to send for this individual, without our interference, and he thought they should do so. If the public character of the individual rendered it improper to compel his attendance

without the interference of the Executive, it would be competent for the committee, without applying to this House, to request such interference. He had some experience of parliamentary proceedings, and he believed it unprecedented for a committee, vested with full powers, to call upon the House to do what might be as well done without their aid. He could easily conceive, that a subject of no great magnitude, in itself, might be clothed with much artificial importance, by such proceedings; and he saw no propriety in the committee reporting the journal of their private proceedings, from time to time, to this House. He was averse to the repeated agitation of the subject in this manner, to the prejudice of other business, by the daily or weekly report of the journal of the committee's proceedings. He desired a full and prompt investigation; the prompter the better; but he thought the committee had ample power over the subject, and he hoped the House would not be called upon to act unnecessarily in the business.

Mr. CUTHBERT, of Georgia, referring to the intimation, as he understood it, of the committee, that the presence of Mr. Edwards was so necessary that the investigation of the charges made by him could not go on without his presence, said he thought there could be no such indispensable necessity for the presence of Mr. Edwards here. The House would perceive, he said, that any individual, intending to do a serious mischief to another, might select a particular moment to prefer charges against another, and, by abandoning his position, preventing an investigation of his motives as well as his charges, leave an erroneous impression on the public mind. It was desirable that the accuser should be where he places his accusation; the common sense of mankind shows that the accuser ought to abide by the consequences of his accusation. But, if he flies from that responsibility, the investigation should not, therefore, be delayed. Such delay would be to furnish the individual with an opportunity of doing all the mischief he desired. Unless it could be ascertained that the individual in question could be brought to this place within a reasonable time, it was desirable, it appeared to him, that the investigation of his charges should not be delayed until he could be sent for.

Mr. WEBSTER replied to the gentleman from Delaware, as to the report made from the committee. It was certainly no unusual thing for the chairman of a committee to make a motion in this House, by the instruction of the committee; and, if a portion of the minutes of the committee were coupled with it, he did not see that that would alter the case, as to the expediency or propriety of the practice. With respect to the suggestion, which had been made, that sending for Mr. Edwards would procrastinate the inquiry, the gentleman from Georgia was not to suppose that the committee was going wholly to suspend this investigation, to wait for anybody's attendance.

Mr. McLANE, still fully impressed with the correctness of the view which he had taken of this matter, moved to recommit the report.

Mr. RANDOLPH said he hoped the motion for recommitment would not prevail; and he rose for the purpose only of calling the attention of the House to a fact, that the select committee have acted by the authority and in the name of this body, and that, whether gentlemen think that Mr. Edwards ought to be brought before the committee or not, the writ is now on its way; that it will be served upon him; and that he will be brought here, whether we vote in one way or another, on this question. In case this inquiry is to be prosecuted, said Mr. R., I cannot consent to act on that committee, except by the imperious mandate of this House, without the presence of the informer. The committee having first resolved that this inquiry should be prosecuted—that the informer should be brought before the grand jury, have reported the fact—for what? That the House, being one of the co-ordinate branches of this Government of ours, should communicate to the other co-ordinate branch, that which, in courtesy, the other branch ought to be put in possession of. What do we ask of the President? To aid us to bring this Minister before us? No; we need no authority from him. We will, despite of any man in this land, have him before us. If, indeed, he shall have made his escape from the country, we cannot follow him to Mexico; but, anywhere short of the Balize, the warrant of this House is as high authority as any known in this land, and, as such, I trust it will be supported. If I had thought that, in the act of that committee, the privileges of this House, the privileges of the American people in their Representatives, had been compromised, no consideration that man can name, would have induced me to give it my sanction. It was at my motion that the order was passed to bring the accuser before us. I hope the House will proceed as proposed. The committee have maintained the authority of this House, which I never will surrender, and have, in their report, acted to the Executive with that comity and urbanity, which, when it shall cease to prevail between the co-ordinate branches of any Government like ours, must throw every thing into confusion.

Mr. COOK, of Illinois, said it had been, and should be, his course, pending this subject, to abstain from saying any thing in relation to the merits of it, and to abstain from exhibiting any thing like feeling in relation to it. In his opinion, the course which the committee had pursued, on this occasion, was a proper one. The Executive had probably given its orders to this individual, and his actual position might not be so well known to any one as to the Executive. Mr. C. thought it was probable that, before any process could reach him, he would have left Illinois, and might have reached New Orleans, and the information communicated to the Executive might be effectual to answer the end

of the process of this House reaching him. Mr. C. concluded by repeating that he would not trust his feelings on this occasion, for he wished to suppress them, so far as to speak on the merits of this controversy, &c.

Mr. FOSYTH asked if he had understood the gentleman from Illinois rightly, when he informed the House that this person was now on his way to New Orleans, and about to pass thence from the United States?

Mr. COOK said that he had so stated, presuming it to be the fact.

Mr. FOSYTH said it was only what he suspected. The Parthian throws behind him his poisoned arrows as he retreats, and then flies beyond the reach of pursuit. But, Mr. F. said, he could not fortunately leave the United States before the process of the committee could reach him. The vessel which was to have the honor to bear him out, had not yet left the navy yard at this place, and, as he would scarcely venture to sail without the protection of the guns of the nation, he could yet be overtaken.

Mr. COOK said that, when up before, he had intended to suggest, that the vessel which was destined to carry Mr. Edwards to Mexico, was yet at this place; that by this vessel, information could be given to him of his presence being desired here; and that the only, at least most probable way, in which the process of this House could reach him, and he could be recalled for the purposes of this House, would be by means of this vessel.

Mr. FLOYD said that the committee had thought it necessary that this individual should be present during the examination of his charges. They were perfectly aware that the authority with which they were invested by the House, was sufficient for all the purposes of bringing him here, and, in the course which they had pursued, had no object but to give the President of the United States, in a respectful manner, information of the course which it had been thought proper, by the committee, to pursue; and he hoped the opposition to it would be withdrawn.

Mr. McLANE said he was not anxious to embarrass the proceedings by the motion which he had made, under the conviction, in his own mind, that the President ought not to be called upon to do what the House has the perfect power to do. He was anxious for this investigation to go on. He thought, with the gentleman from Virginia, that the informer on this occasion ought to be present; but he thought, also, that the whole matter was already within the power of the committee. To save trouble to the House, however, he would withdraw his motion for recommitment.

Mr. MALLARY, of Vermont, said the House had given the committee all the powers which it possesses in relation to this matter. The question is now, whether it is necessary to call upon the House to aid the committee to carry its powers into execution. The committee have all the powers of this House on the subject, and

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have certainly the same power to communicate the fact of their proceedings to the President, that this House has, and on the same principle on which they would have power to ask information from him.

Mr. FORSYTH said that he had not offered his first motion on this subject (that which the House refused to consider) before this House had referred the inquiry into the subject to a committee, with power to send for persons and papers. It appeared to him, he said, at the time he made the motion, that such a proceeding was absolutely due, in courtesy to the Executive. Perhaps, he said, he had some little feeling on this subject, arising from the difference of the manner in which his proposition, and the nearly similar one of another gentleman, had been received. He saw no necessity, however, for pressing his amendment, though he could not see any occasion for all this particularity on the subject. In deference, therefore, to the wishes of several of his friends, whose opinions he always respected, he withdrew his motion for amendment.

The question recurring on the report of the committee—

Mr. FULLER, of Massachusetts, said he was rather sorry that the gentleman from Georgia had withdrawn his motion, because it was perfectly free from any ambiguity, which the proposition of the committee was not. If the amendment had prevailed, however, he could not have voted, for this reason: He was one of those who hoped, the other day, that the motion for printing the memorial would have prevailed, and that he should thus have been enabled to judge of the necessity of the presence of the accuser. At present, he said, he did not feel himself competent to decide whether his presence was necessary or not. He, for one, moreover, was not willing to notify the President that the committee thought the interposition of the authority of the House necessary, because the committee are themselves competent to do it, and, if they think proper, it is their duty to do it. There was another consideration on this subject, which Mr. F. thought must occur to the mind of every one. Is it possible, is it probable, at any rate, that Congress will remain in session for two months to have the presence of this gentleman? It would take a month to give notice to this individual, another month to get him here, and after he got here, the investigation of the case by the committee would not occupy less than two or three weeks. A full investigation of this case, Mr. F. hoped, would take place at the next session. Under the present circumstances, he saw no occasion for giving information to the President of the opinion of the committee.

Mr. BARTLETT, of New Hampshire, said he was desirous of understanding rightly what was the object of the motion before the House. If he had a correct view of it, some other gentlemen who had spoken had not. It had been suggested, that there was not time to send for

this person, and that the House ought not to give this notice to the Executive, because by so doing it would commit itself. Those questions, said Mr. B., are not now before the House. The House has confided the question to a select committee; that committee has decided it, and it is a question no longer to be discussed. I do not understand the resolution as it is understood by one gentleman, as being intended to give facility to the execution of the power which the committee have undertaken to exercise, but as intending this, and nothing more: that this person, whom the committee have sent for, who, they have said, shall come here, and who, I have no doubt, will come here, is a person whom the President, with the consent of the Senate, has ordered on service to a foreign Government. Some time ago, we gave to the President power to appoint Ministers to certain Governments, whenever he should think it expedient to do so. We have, by the act of our committee, temporarily revoked that power so far as he has exercised it in this particular instance. He has said, that Ninian Edwards shall be Minister to Mexico; we have said, that he shall not go. If the United States have great interests at stake in Mexico, and it is necessary we should have a Minister there, it is proper that we should inform the President that the person whom he has appointed for that purpose we have recalled. If the President sent him, and we, in the plenitude of our power, ordered him back, is it not necessary that the President should be informed of the fact? It had been suggested, that the committee has the power to communicate this information to the President. My opinion, said Mr. B., is, that they have not. They have not the power to communicate directly with the President on the subject, but they have the power to give information on the subject to this House, of which they are the organ, and the information being so given, the question now is, whether it be proper to give it to the Executive. If the appointment of a Minister was necessary, it continues to be so. If it was necessary a month ago, no change of circumstances having occurred, the interest of the country now equally demands that a Minister proceed directly to Mexico; in which case it might be necessary for the President, on receiving this information, to designate some other person for this station, &c.

Mr. BUCK, of Vermont, made a few observations, the import of which were, that it was not material whether this information were given to the Executive by the committee, or by a vote of this House—so that whether the present proposition was agreed to or not, appeared to him to be of little importance.

The question was then taken on the report of the committee, as above stated, and it was agreed to, almost without a dissenting voice.

Mr. FLOYD then moved that the Clerk of this House be directed to adopt measures to expedite the printing of the report of the Secretary of the Treasury, upon which the said communi-

cation is founded, and that the said communication, with its accompanying documents, be printed; which was agreed to.

FRIDAY, April 23.

*Mr. Ninian Edwards notified by the President not to Depart from the United States.*

A Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

*To the House of Representatives of the United States:*

In conformity with a resolution of the House of Representatives, of yesterday, I have received a copy of the proceedings of the committee to whom was referred a communication from Ninian Edwards, lately appointed a Minister Plenipotentiary to Mexico, in which it is decided that his attendance in this city, for the purpose of being examined by the committee, on matters contained in the said communication, was requisite. As soon as I was apprised that such a communication had been made to the House, anticipating that the attendance of Mr. Edwards might be desired, for the purpose stated, I thought it proper that he should be informed thereof, and instructed him not to proceed on his mission, but to await such call as might be made on him, either by the House, or its committee; and, in consequence, a letter was addressed to him to that effect, by the Secretary of State.

JAMES MONROE.

APRIL 23, 1824.

*Public Lands—Pre-emption System—Adverse Report.*

Mr. WHIPPLE, from the Committee on Public Lands, who were instructed by resolutions passed by the House, on the 31st December, 1823, and the 2d and 28d of January last, to inquire into the expediency of granting pre-emption rights in the purchase of public lands, in certain cases, and to whom was referred the petition of Hardy Doyal and George Caperton, and the petition of L. C. Davis, made a report thereon; which was laid on the table.

The report is as follows:

Before adverting to the particular cases embraced by the resolutions and petitions referred, the committee deem it proper to make some general observations on the subject of pre-emption grants, as connected with the general policy of the Government in relation to the public lands.

By reference to the various laws on the subject of pre-emptions, it will be perceived that, where the United States have acquired territory where settlements existed at the time of the acquisition, the persons having made such settlements have been permitted by the Government to retain their lands by paying therefor the minimum price, subject to a reasonable limitation as to the quantity to be retained.

In cases where territory has been acquired from foreign powers by treaty, this privilege has been extended to the period in which the United States took the actual possession of the ceded territory. Some modifications of these principles have, at times, and under particular circumstances, existed, but the main principle has been generally adhered to.

The committee are of opinion that an extension of these principles would be injurious to the Government, as well as to those who may hereafter become the purchasers of the public lands, and probably to those, also, who may venture to settle upon Government lands without authority hereafter.

It cannot be perceived by what principle persons having no color of title should, after lands on which they have settled were known to belong to the United States at the time of making such settlement, claim the pre-emption right to such lands.

Should the Government sanction applications of this nature, an inducement would be offered to persons of an enterprising disposition to anticipate, in every quarter, the Government in its sales of the public lands, and to settle upon and improve the most valuable tracts of land, which they would claim at the minimum price, whenever such lands were brought into market by authority of the United States.

Purchasers of land finding themselves prevented from acquiring good lands, would abstain from purchases, and resort to illegal settlements, in the hope of obtaining that at the minimum value, which they could not obtain at fair and open sale.

Thus, a competition would be excited among a certain description of our population, to locate themselves upon the public lands without much regard to lines or boundaries, and with very little respect for the rights either of the Government or their Indian neighbors.

When it might become necessary for the Government to offer for sale the tracts on which these settlements had been made, the persons interested would find arguments at hand, in their poverty and distress, and the situation of their families, to show why they should be permitted to retain their homes and their improvements.

Abuses like these would necessarily attract the attention of the Government, and induce Congress to adopt rigorous measures to repress them, by which many who had thus precipitately made unauthorized settlements would be deprived of their labor, and again be compelled to begin anew, thus losing the labor of years.

A system of indulgence to those who trespass by making unauthorized settlements upon the lands of the United States, after those lands are known to be the property of the Government, would, in the opinion of the committee, be productive of much perplexity to the Government, as well as of injury to those concerned in the purchase and settlement of the national domain.

The committee will now proceed to consider the several resolutions and petitions referred to them, which relate either to pre-emption rights or to indulgences prayed for by those who have made unauthorized settlements upon the public lands.

By the resolution of December 31st, 1823, the committee are "instructed to inquire into the justice and expediency of granting to actual settlers in that part of the State of Louisiana, lying east of the Mississippi and island of New Orleans, a right of pre-emption to public lands, in the same manner, and for the same period of time after possession thereof by the Government of the United States, as was granted to such settlers in the late Territory of Orleans, after possession thereof as aforesaid."

It will be perceived, by reference to the act of Congress of April 12th, 1814, that pre-emption rights were granted to actual settlers in that part of

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the State of Louisiana west of the river Mississippi, up to the date of said act, that is, to the 12th April, 1814.

The United States took possession of this portion of the State of Louisiana on the 10th of December, 1808, consequently, settlers for a period of eleven years after the possession of the territory of Orleans by the United States, had the right of pre-emption of the lands on which they had settled secured to them.

In that portion of the State of Louisiana which lies east of the river Mississippi and Island of New Orleans, a different rule was adopted.

The Government did not get possession of this portion of the ceded territory until the autumn of 1810; prior to which time it was under the Government of Spain, consequently, settlers in this portion of the territory had the right of pre-emption secured to them by the act of 1814, only for a period of four years after the possession by the United States.

The resolution, therefore, contemplates extending to all who had made settlements on the public lands of the United States, in the portion of the State of Louisiana east of the river Mississippi, up to the year 1821, the right of pre-emption of the land on which they have settled.

The committee deem it inexpedient to extend the right of pre-emption in this manner.

The act of the 12th April, 1814, extended equally to all portions of the State of Louisiana, and if any inequality existed in the situation of the people of different sections of the State, this circumstance ought not of itself to be made ground of claim upon the Government. Those who reside east of the river Mississippi and Island of New Orleans, had, by that law, the right of retaining their lands at the minimum value, although they had settled on them without leave of the Government, four years after the lands were, by solemn transfer and formal possession, known to be the property of the United States; the Government has, therefore, treated these settlers with great lenity and indulgence; and if some of their neighbors have, by the peculiarity of their situations, derived greater benefits from the act of 12th April, 1814, the committee cannot, on this account, be induced to deem it proper to sanction the principle that persons ought to be encouraged to settle upon the public lands for ten or eleven years after they are known to be the property of the United States. It may, however, be doubted, whether the act of 1814 has not operated nearly equally upon the settlers on the public lands within the State of Louisiana. It was well known by the people, that the whole territory acquired by the treaty ceding Louisiana to the United States, would ultimately fall under their Government, and there can be little doubt that many settlements were made within the territory in anticipation of this event; hence, the time of taking possession of different portions of that tract of country, could produce very little inequality with respect to those who had pre-emption rights granted them by the act of the 12th April, 1814.

By the resolution of January 2d, 1824, the committee are instructed "to inquire into the expediency of granting the right of pre-emption to all persons to mill seats on public lands, where the same may have been actually improved as such by them."

It will be readily perceived that, if the Govern-

ment should sanction a principle of this kind, these valuable appendages to the public lands would be universally taken up and occupied to the great injury of the Government, and with no advantage to those who may wish to purchase public lands, except to the favored individual.

The committee are therefore of opinion, that it would be injudicious, and that it is inexpedient to adopt such a provision.

By a resolution of the same date, the committee are instructed "to inquire into the expediency of granting to actual settlers prior to the 1st of July, 1820, in the State of Alabama, the right of purchasing, by pre-emption of at least one-quarter section of land, embracing their family residences."

The committee refer to the general observations in the commencement of this report, and again repeat that they can see no sound reason for permitting persons who have knowingly made unauthorized settlements on the public lands, to have and enjoy peculiar privileges and indulgences; they are therefore of opinion that the adoption of such a measure would be impolitic and inexpedient.

By a resolution of January 23d, 1824, the committee are instructed "to inquire into the expediency of reviving the law of the 25th March, 1816, relating to the settlers on the lands of the United States."

This act, as will be seen by reference to it, provides that persons settling on the public lands of the United States, may, upon application to a register, recorder, or marshal, or to such person as either of them may appoint, be permitted to remain on such lands, provided the applicant shall sign a declaration, purporting that he or she has no claim to the lands on which he or she may be located. Books are to be kept and a registry of the applications and permissions is to be made, and such forms prescribed as the Secretary of the Treasury, with the approbation of the President of the United States, may direct. The persons availing themselves of the provisions of this act are to be considered as tenants at will, and to obligate themselves not to commit waste, and to yield quiet possession when the lands shall be sold by the Government.

The committee can see no good reason for renewing this law, which has been continued in force until the 3d March, 1819, a period of three years.

Those who had located themselves on the public lands prior to, and until the 3d of March, 1819, have had opportunity to avail themselves of the benefits of this act, and those who have since that time made unauthorized settlements on the vacant lands of the United States, can have no just ground of complaint, if left to the ordinary operation of the laws relating to such persons.

To revive the law of 1816, would be to hold out inducements to settle on the public lands, under the expectation, that until such lands were sold, the persons making settlements would be permitted to cultivate and improve them for their own profit and benefit. Were the Government to grant these facilities, it is easy to perceive that no regard whatever would be paid to the regulations of the laws forbidding unauthorized settlements upon the public lands.

The experience of the Government would lead us to conclude, that the final request of these settlers would be for pre-emption rights, or at least to be permitted to retain their crops. But the committee trust that enough has been said to show the inde-

fensible nature of this proposition; they will therefore dismiss it.

The petition of Lewis C. Davis was referred to the committee on the 26th January, 1824. He states that he purchased a quarter section of land in the State of Alabama, for which he gave fourteen dollars per acre, that he is unable to pay for it and was compelled to relinquish it, and prays to be permitted to re-enter the land at the pre-emption price. There appears to be nothing in this case to entitle the petitioner to particular favor, and the committee see no cause why he should not be subjected to the operation of the laws and regulations of the Government relative to such cases.

The petition of Hardy Doyal and George Caperton, of Alabama, referred to the committee on the 27th January, 1824, states that the petitioners have erected a grist-mill on the public lands and cleared a farm adjoining it; that they have expended their whole property in the enterprise; they therefore pray to be permitted to take a certain quantity of land including their mill, at the pre-emption value, and that the Government should grant them a credit of six months from the issuing of the patent.

The committee deem it unnecessary to enter into detailed reasoning to show the inadmissibility of this proposition. It is sufficient to remark, that it is in direct contravention of the policy which it is believed the Government ought to pursue, for the purpose of putting a stop to unauthorized settlements on the public lands.

#### *Penelope Denney.*

On motion of Mr. CAMBRELENG, the House went into Committee of the Whole, (Mr. CONDICT in the chair,) on the bill "for the relief of Penelope Denney." Several documents were read. The question being still pending from a former sitting, in January, to amend the bill, by providing the support of Mrs. Denney from the Navy Pension Fund, instead of the Treasury of the United States, a debate arose, in which Messrs. CAMBRELENG, FULLER, WOOD of New York, WARFIELD, and BUCHANAN, took part.

Mr. BUCHANAN moved to strike out the enacting clause—and the debate was then farther continued by Mr. FULLER, Mr. BUCHANAN, Mr. CAMBRELENG, Mr. LIVINGSTON, Mr. WARFIELD, and Mr. SHARPE.

In this debate, the merits of Denney were not disputed, nor the wants of his mother, but it was objected to the bill that it introduced a new principle in the pension laws of the United States, by providing for *parents*; the present laws only making provision for widows and children; and it was further argued that, if given at all, the pension should come out of the Treasury of the United States, and not out of the Navy Pension Fund. That fund, consisting of contributions of prize money, was, at its creation, pledged to a class of persons to which cases of this kind did not belong, and it would be a breach of public faith to touch it.

The question was then taken on striking out the enacting clause, and decided in the negative—ayes 58, noes 68.

The question then recurring on striking out the clause of the bill which provides to pay the

pension "out of any moneys in the Treasury of the United States," and inserting, in its place, "the Navy Pension Fund," the debate was resumed by Messrs. BRECK, CAMBRELENG, FULLER, HAMILTON, and BUCHANAN; and the question being taken, it was decided in the affirmative—ayes 89, noes 58.

The bill was then reported to the House; the amendment was agreed to, and the question being on ordering it to a third reading, Mr. BRECK called for the yeas and nays.

Mr. METCALFE then moved to lay the bill on the table, which was negatived—ayes 50, noes 88.

The yeas and nays, on ordering the bill to a third reading, were then taken: Yeas 62, nays 98. So the bill was rejected.

SATURDAY, April 24.

#### *Adjournment of Congress.*

Mr. TAYLOR, from the joint committee appointed to report what business required the attention of Congress during the present session, and at what time Congress shall adjourn, made a report in part with respect to the business to be taken up, which is divided into classes, and reported the following resolution:

*Resolved*, That all the legislative business before the Senate; the bills before the House of Representatives, mentioned in schedules No. 1, 2, 3, 4; and so many of those mentioned in schedule No. 5, as time shall permit—be acted upon at the present session. That precedence be given to private claims, examined and sanctioned by the committees to which they were respectively referred, and to bills of a public nature which it is believed will not require protracted discussion. And that those which are embraced in schedule No. 5, which shall not be decided upon before the rising of Congress, be preferred in the orders of the day, at the commencement of the next session of Congress.

Mr. TAYLOR explained the arrangement which the committee had made, and the resolution was adopted.

#### *Daily Recess, &c.*

Mr. TAYLOR, from the same committee, reported the following resolution:

*Resolved*, That, after this day, until otherwise ordered, the House will daily take a recess, from two o'clock, until four o'clock, in the afternoon.

Mr. CAMPBELL spoke in opposition to the resolution. There would be a difficulty in procuring a quorum. The evening session must be short. He was utterly opposed to nocturnal sessions, &c.

Mr. TAYLOR replied, and insisted that the measure proposed was the best mode of avoiding the necessity of nocturnal sessions. It would obviate the necessity of prolonging the session.

At the suggestion of Mr. WEBSTER, the motion was modified, so as to propose a recess from two o'clock until four, and the hour of meeting in the morning to be ten o'clock.

Mr. DWIGHT inquired whether, if this resolu-

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tion should be adopted, it is probable the committee would concur in the date of adjournment resolved upon by the Senate?

Mr. TAYLOR replied, and explained.

Some conversation took place between Messrs. STEWART, WRIGHT, LITTLE, TAYLOR, McCoy, KREMER, and STEWART.

The resolution was then adopted, and the arrangement of the orders of the day was ordered to be printed.

MONDAY, April 26.

*Retrocession of Alexandria.*

Mr. NEALE presented a memorial of sundry inhabitants of the county of Alexandria, in the District of Columbia, praying that they may be restored to their parent, the State of Virginia. — Referred to the Committee for the District of Columbia.

WEDNESDAY, April 28.

*Claim of Daniel D. Tompkins.*

A Message was received from the PRESIDENT OF THE UNITED STATES, which was read as follows:

*To the House of Representatives:*

The House of Representatives having referred back the accounts and claims of Daniel T. Tompkins, late Governor of New York, to be settled on the principles established by the report of the committee, and the law founded on it, in the last session; I have reconsidered the subject, and now communicate the result.

By the report of the committee, which it was understood was adopted by the House, it was decided that his accounts and claims should be settled on the four following principles:

First. That interest should be allowed him on all moneys advanced by him for the public, from the time of the advance to that of his being reimbursed.

Second. That a reasonable commission should be allowed him on all moneys disbursed by him during the late war.

Third. That an indemnity should be allowed for all losses which he had sustained by the failure of the Government to fulfil its engagements to send him money, or Treasury notes, within the time specified, to be deposited in certain banks, as collateral security, for loans procured by him, at the request, and on account of, the Government.

Fourth. That he should not be held responsible for losses incurred by the frauds and failures of sub-agents, to whom moneys were advanced through his hands.

On the first: That of interest on his advances for the public, I have allowed him \$14,438 68. This allowance is made on advances admitted by the accounting department, and on the declaration of Mr. Tompkins that the remittances made to him, after his advances, and previous to the 24th of December, 1814, when a very large sum was remitted to him, were applied to public purposes, and not to the reimbursement of his advances.

On the second head: That of a reasonable commission for his disbursements, during the late war, I have allowed him five per cent. on the whole sum disbursed by him, amounting to ninety-two thousand two hundred and thirteen dollars, thirteen cents. I have made him this extra allowance in

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consideration of the aid which he afforded to the Government at that important epoch, in obtaining the loan of a considerable part of the sums thus disbursed.

On the third head: That of an indemnity for losses sustained by him, in consequence of the failure of the Government to fulfil its engagements to send him money or Treasury notes within the time specified, I have allowed him \$4,411 25, being the amount of the loss sustained on the sale of the Treasury notes, for which he was responsible.

On the fourth head: That of losses sustained by him by any frauds or failures of sub-agents, none such having been shown, no allowance whatever has been made to him.

From the amount thus allowed to Mr. Tompkins, after deducting the sum paid him, under the act of the present session, and the moneys charged to his account, there will remain a balance due him, of \$80,238 46, as appears by the sketch herewith communicated.

In making a final decision on Mr. Tompkins's claims, a question arises, shall interest be allowed him on the amount of the commission on his disbursements? The law of the last session grants to the President a power to allow interest on moneys advanced by him to the public, but does not authorize it on the commission to be allowed on his disbursements. To make such allowance belongs exclusively to Congress. Had his claims been settled at the end of the last war, on the principles established by the law of the last session, a commission on disbursements would then have been allowed him. This consideration operates with great force in favor of the allowance of interest on that commission, at this time, which I recommend to Congress.

I think proper to add, that the official relation which I bore to Governor Tompkins, at that very interesting epoch, under the highly distinguished and meritorious citizen under whom we both served, enabling me to feel very sensibly the value of his services, excites a strong interest in his favor, which I deem it not improper to express.

JAMES MONROE.

APRIL 28, 1824.

The Message and document were referred to the Committee on Ways and Means.

And then the House adjourned.

MONDAY, May 8.

*Claim of Massachusetts.*

Mr. HAMILTON, of South Carolina, from the Military Committee, to which was referred the Message of the President of the United States on the claim of Massachusetts for services rendered by the militia of that State during the late war with Great Britain, made a report, accompanied by a bill "to authorize the settlement and payment of the claims of the State of Massachusetts for certain services rendered during the late war." The following is a copy of the report:

The Committee on Military Affairs, to which was referred the Message of the President of the United States, "on the claim of Massachusetts for services rendered by the militia of that State during the late war with Great Britain," beg leave most respectfully to report:



That, in considering the subject submitted to their investigation, they have been fully impressed with its intrinsic importance, and its association with events which were once the occasion of much sensibility and excitement. They trust, however, that they have approached the discussion, devoid of all prejudice, with an honest desire, in doing justice, to sustain those great principles of concord and power, which are essential to the durability of this Union.

Your committee deem it entirely unnecessary that they should recite all the circumstances comprising a history of this claim, as they are generally known to the nation, and are to be found in an authentic shape, in the documents accompanying the President's Message. To this source your committee would ask a special reference.

It will be sufficient for present purposes to premise, that a large portion of the claim of Massachusetts does not appear to be affected by those constitutional difficulties which so long, in the consideration of the Executive of the United States, operated as an impediment to its adjustment.

Your committee are unanimously of opinion that the services rendered by the militia of Massachusetts, which may be considered beyond all exception, and as entitled to remuneration, are comprised in a class of cases in which, by the spontaneous impulse of the militia, with or without the sanction of the Executive of that State, or with or without a requisition on the part of the officer of the United States commanding the department, they assembled, either for the purpose of repelling actual invasion, or under a well-founded apprehension of invasion. It is, in fact, on this principle, and on this principle only, that the claims for militia services of the various States have been audited and allowed at the Department of War. Services of this description, patriotically performed, ought not to be prejudiced by a pre-existing difference of opinion between the Executive of Massachusetts and the commanding officer of the United States forces, as to an abstract construction of the constitution, when such a difference of opinion appears to have had no sort of effect on the extent and character of the services afforded. But, on the other hand, your committee are equally unanimous in declaring that, in all cases where the acts of the Executive of Massachusetts gave a direction to the services of the militia of that State, in opposition to the views of the General Government, the claim for such services is altogether inadmissible; for these, the government of Massachusetts may be considered to have incurred an ulterior and exclusive responsibility to her own people.

Your committee waive the discussion of the question how far the renunciation, on the part of the Executive and Legislature of the State of Massachusetts, of the unconstitutional principles on which the then Governor of that State acted, in the early stages of the war, is necessary to the allowance of any portion of the claims of the State for the services in question. These claims, when first presented for adjustment, immediately after the late war, were considered rather in the mass, than in reference to the particular items of which they are composed. In fact, at that early period, the principles on which the claims for militia services ought to be audited and allowed, were but imperfectly fixed. The subsequent presentation and examination of the claims of the several States, for such services, have shed much light on this subject, and

have afforded many advantages at the present moment in examining those of Massachusetts. Distinctions, important to the elucidation of principles, and to the ascertainment of justice, have been taken, and sustained, which might naturally have been overlooked at the commencement of the discussion.

Your committee, however, cannot abstain from indulging in one remark, that, if the fact of the Government of Massachusetts having declined, for some years subsequent to the late war, to renounce the unconstitutional doctrines of her then Executive, as developed in the opinions of the judges of her supreme judicial court, can be supposed ever to have borne upon that portion of the claim which the committee have recommended for payment, the recent disavowal of her present Executive and Legislature furnishes at least a belief that all danger of a future collision between the General Government and the States, in reference to the authority of the former over the militia of the latter, has been permanently removed. In this light, the committee cannot but regard the renunciation as honorable to the Chief Magistrate and Legislature of Massachusetts, and as highly useful in fixing the true interpretation of the constitution, on an interesting and important point. This disavowal, in consonance, as it is affirmed, with the sentiment of the great mass of the people of Massachusetts, is, indeed, a reiteration of the language which was expressed by the Senate of that State, as early as October, 1812, at the moment when the unfortunate irritation between the National and State functionaries was most exasperated, and when remuneration for these services formed neither a subject of calculation nor desire.

Your committee, in conclusion, recommend that, in all cases where the militia of the State of Massachusetts were called out in conformity with the desire of an officer of the General Government, or to repel actual invasion, or under a well-founded apprehension of invasion, during the late war, the claim of the State for such militia services be allowed, under the usual rules of auditing and allowing similar claims; provided the number of troops so called out were not in undue proportion to the exigency.

Your committee likewise recommend that the claims of Massachusetts, not comprehended in the above description of cases, be disallowed. And, in conformity with the foregoing principles, ask leave to report a bill.

Mr. HAMILTON moved to refer this report to a Committee of the Whole on the state of the Union.

Mr. COBB, of Georgia, objected to this course, as giving undue preference to this over other business. He wished it to be referred in the usual course of business, for the purpose of discussion, simply to a Committee of the Whole.

Mr. HAMILTON urged the importance of this claim, as claiming from them urgent consideration. The course which he now proposed had been pursued in regard to certain claims of the State of Georgia, and he thought the claims now reported upon were at least equally entitled to attention from the House. The misrepresentation in some cases, and misunderstanding in others, under which this claim labored, rendered it highly expedient that it should have a prompt examination, when he had no doubt of

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being able to satisfy the House of the expediency of providing for its liquidation, &c.

Mr. COBB said he did not mean to utter a single word in opposition to the justice of this claim. It was very probable the gentleman from South Carolina might be able to convince even incredulity itself on the subject. My only objection to the proposed reference is, said Mr. C., that there is no resemblance between this case and that of the Georgia militia claims, to which, I presume, the gentleman refers; but, if there were, that the subject of those claims of Georgia is before an ordinary committee, and not a Committee of the Whole on the state of the Union. I am willing to give this claim the same direction as they have received.

Mr. HAMILTON said, that, with regard to the Georgia militia claim, he knew it had taken that direction. The claim of Georgia to which he alluded, however, was that last reported upon, respecting the Indian reservations within the limits of that State.

The question was then taken upon the motion of Mr. HAMILTON, and decided in the negative.

On motion of Mr. COBB, the report was then referred to a Committee of the Whole.

*Occupying Claimant Laws, &c.*

On motion of Mr. LETCHER, of Kentucky, the House resolved itself into a Committee of the Whole on the state of the Union, Mr. DWIGHT in the chair, on the remonstrance addressed to the Congress of the United States, by the State of Kentucky, on the subject of the decision of the Supreme Court, in the case of *Green vs. Biddle*, involving the constitutionality of the occupying claimant laws of Kentucky, as they are usually called.

Mr. LETCHER then submitted a proposition, in the following words:

"*Resolved*, That provision ought to be made by law, requiring, in any cause decided in the Supreme Court, in which shall be drawn in question the validity of any part of the constitution of a State, or of any act passed by the Legislature of a State, that — justices shall concur in pronouncing such part of the said constitution or act to be invalid; and that, without the concurrence of that number of said justices, the part of the constitution, or act of the Legislature, as the case may be, so drawn in question, shall not be deemed, or holden, invalid.

"*Resolved*, That the justices aforesaid, in pronouncing their judgment in any such cause, as aforesaid, ought to be required, by law, to give their opinions, with their respective reasons therefor, separately and distinctly, if the judgment of the Court be against the validity of the part of the constitution or act drawn in question, as aforesaid.

"*Resolved*, That the Committee on the Judiciary be instructed to report a bill in conformity to the preceding resolutions."

Mr. LETCHER observed that, in the much celebrated and never to be forgotten case of *Green vs. Biddle*, the judgment pronounced and the principles decided by the Supreme Court of the United States, had given great alarm to the

people of Kentucky. As that was a case which bore upon the present question, and which, indeed, had immediately led to the resolutions and memorial now before the committee, it might not be irrelevant for him to take a very brief review of it.

He did not intend, he said, to make a tedious law argument; he would, however, suggest, on the threshold, if any gentleman, from Virginia or elsewhere, felt the slightest wish to attempt to maintain that decision as correct, upon any of the well-settled doctrines of the law, without wishing to be understood as using language of a gasconading character, he would say, the limited delegation from Kentucky were ready, at any time, and before any tribunal, to meet them.

In the year 1789, Kentucky, then an integral part of Virginia, and being desirous of becoming an independent State of the Federal Union, entered into a compact with Virginia, with a view to a separation for that end. It consisted of eight articles; one of which was drawn into dispute in the case to which he had alluded; and the decision of the Supreme Court upon it, had virtually declared that Kentucky, although nominally a sovereign and free State, has, nevertheless, no legislative jurisdiction over her own soil. She is a sovereign State; but yet has no power to pass any law for the aid, the convenience, the comfort, and the protection of her own citizens. This decision, the people of Kentucky had viewed as a most ruinous and extraordinary one; and it is only because they have entertained the liveliest hope that the case still admits of some remedy, that a greater excitement has not prevailed.

But what, said Mr. L., are the laws of Kentucky, which that decision has pronounced a violation of the compact, and therefore unconstitutional? and what were the circumstances under which they were enacted? The first act of the Kentucky Legislature passed in the year 1797, the second in 1812. Each had for its object, in case of his eviction, by a paramount title, to secure to the occupant, who had settled upon the land in good faith, believing it to be his own, and who had made valuable improvements upon the same, a reasonable compensation for those improvements.

The necessity of these several laws grew out of the condition of the country. The early settlers of the State had to contend with the most complicated and appalling difficulties. They had not only to encounter every species of toil, of peril, and of suffering, incident to the settlement of an unexplored wilderness, but they had to struggle with a formidable and savage foe, in a war of ten years' duration. When, sir, they had conquered this enemy, and in some small degree begun to enjoy the fruits of their efforts, innumerable claims were set up to the land, which they had first conquered and then defended; claims which grew out of the mistaken policy, not of Kentucky, but Virginia. That policy had literally covered the country

over and over again with a great variety of conflicting claims. These adverse claims necessarily occasioned, to the first settlers, the greatest distress, and trouble, and litigation. The early adventurer to the country, who had experienced every sort of privation, was very illy requited for his boldness, his industry, and his enterprise. Just after he had been able to obtain a good tract of land, to build houses, to clear fields, with the most flattering prospects before him of providing for a dependent family; at the moment he was prepared for the enjoyment of quiet and repose, suddenly he found himself expelled from the possession of the very farm he had been laboring to improve; with nothing left him, but the privilege of buying and improving another place, and again losing it at law, without the most distant hope of compensation for his labor thus employed upon it. Such was the melancholy condition of the first settlers in Kentucky. This state of things brought about the injurious practice of buying and selling every sort of land claim, some real, others fictitious; of alarming the ignorant and illiterate; of extorting money for a compromise; of swindling, in all its various moods and tenses—in short, sir, of creating a system of speculation, of fraud, and oppression, from the effects of which we shall never, I fear, be able to get entirely rid. The existence of such afflicting evils required a speedy remedy; that remedy was the immediate passage of the law of 1797. It was a just and beneficent law, imperiously called for by existing circumstances, demanded by every consideration of justice, and most salutary in its operation. It is a duty, said Mr. L., which every Government owes to each and all its citizens, to furnish every means in its power to diffuse among them happiness, contentment, and equal rights—to reward industry, by protecting every one in the free enjoyment of the benefits of his own labor, and to prevent the cunning and the idle part of the community from fattening upon the proceeds of their neighbors' hard earnings. The Legislature of Kentucky, therefore, in the enactment of those laws, acted correctly, if they were not already precluded from the rights of legislation over the soil of the State, by the terms of the compact. Now, what are the provisions of this compact, which bear upon this question, and which, in the opinion of the court, amount to a consent upon the part of Kentucky never to exercise legislative rights in connection with her freehold?

The third article, to which the court refers, in exclusion of the residue, to maintain the correctness of their opinion, is in the following words: "That all private rights and interests of lands within the said district, derived from the laws of Virginia, prior to such separation, shall remain valid and secure, under the laws of the proposed State, and shall be determined by the laws now existing in this State."

To understand correctly the meaning of the words expressed in the foregoing provision, by the contracting parties, it becomes important to

look to the relative condition of each, and to ascertain the contemplated object of the contract. Kentucky, unprotected and unaided, had experienced all the fortunes and all the horrors of an Indian war. She had waded through her troubles, had been weighed in the balance, and not found wanting; had borne down every opposing obstacle, and proved herself worthy of enjoying all the blessings, the privileges, and immunities, of a free and sovereign State. She petitioned Virginia to aid her in obtaining them. Virginia was ready, willing, and anxious to render her every facility. All the feelings of Virginia towards her were of the most partial and benevolent character; she felt as a parent to a child. Indeed, there existed mutual affection; each understood well the situation of the other. In this state of things, they made the compact. The object was—what? Why, to enable Kentucky to set up for herself; to confer upon her the right of enacting laws to suit her condition; to adopt such regulations as were most conducive to her own interest, and to superintend her own internal affairs in a manner most agreeable to her own will, free from any and every control of the mother country.

How, then, are you to interpret the words of the stipulation just referred to? The first and best rule is, to use as much common sense as you can well employ, in giving a construction to any contract, and to lay aside the doctrine of "construction construed;" to crowd in as few artificial, unmeaning distinctions, as possible; and to endeavor to ascertain the fair meaning of the parties, as expressed by the words of the contract.

"That private rights and interests, &c., derived from the laws of Virginia, &c., shall remain valid and secure," &c. What was the nature of those private rights here agreed to be made secure? They were rights and interests of an imperfect character, such as surveys, warrants, entries, &c., which were preparatory to obtaining a grant or patent from the Government; not absolute rights, which had been made complete by the emanation of grants; for this obvious reason: the latter class required no agreement to make them valid and secure; they were already as much so as they could be, even with the strongest provisions—they were vested rights. It would, therefore, be at once saying that neither of the parties to the aforesaid instrument understood what they were doing, to suppose they would have engaged in a serious negotiation to guard against an evil which could not happen. "Rights derived from the laws of Virginia," &c. The term, "laws of Virginia," as here used, as understood by both parties, as understood in common usage, meant nothing more nor less than the statute laws of Virginia, as contradistinguished from the statute and common laws of England—the acts of the Virginia Assembly, which had from time to time been enacted, creating rights of various kinds, such as poor rights, settle-

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ment and pre-emption rights, village rights, military rights, &c. Under these Virginia statutes, many of the citizens of Virginia had become interested, to a considerable extent, in inchoate rights to lands in Kentucky, which grew out of this course of legislation. Virginia, therefore, felt anxious (and very justly too) to make a provision of this kind, to enable those who had, under the several acts aforesaid, vested capital in the purchase of these lands, and whose rights were incomplete, to have them made secure; and Kentucky, willing also that Virginia should act a faithful part towards her own citizens, agreed to the aforesaid article; the meaning of which is, that she, (Kentucky,) on her part, would pass no law which would destroy those inchoate, equitable rights, created by the State of Virginia; that she would present no obstacles in the way to prevent their ultimate perfection. Sir, the term "laws of Virginia," is still understood in Kentucky, and Virginia, also, up to the present period, in legal as well as common style, to apply distinctly and exclusively to the Virginia code of laws, without the slightest connection with or dependence upon the common law of England. The parties, therefore, who draughted this compact, never once thought of including the common law. If such had been their object, it was very easy, by the use of a single expression, to have made a declaration to that effect. But the principles of the common law could not very well apply to the situation of the country. To prove, however, that the interpretation given by the court of the clause to which I have alluded, is wholly erroneous, we have but to look a little further into this compact, and examine for a moment the fourth stipulation. What does it declare?

"That the lands within the proposed State, of non-resident proprietors, shall not in any case be taxed higher than the lands of residents, at any time prior to the admission of the proposed State to a vote, by its delegates in Congress, when such non-residents reside out of the United States; nor at any time, either before or after such admission, where such non-residents reside within this commonwealth, within which this stipulation shall be reciprocal; or where such non-residents reside within any other of the United States, which shall declare the same to be reciprocal within its limits; nor shall a neglect of cultivation or improvement of any land within either the proposed State or this Commonwealth, belonging to non-residents, citizens of the other, subject such non-residents to forfeiture, or other penalty, within the term of six years, after the admission of the said State into the Federal Union."

The second rule of construing a contract, (if not already laid down by legal writers, for the guidance of judges, ought to be,) is, to *examine the whole of it*; to see if all the parts will harmonize, and to look into the consequences, which will of necessity result by this or that mode of construction; and to ascertain, by such and such interpretation, whether the object of

the contractors is or is not defeated. This second rule has been entirely overlooked by the court in pronouncing their decision; the fourth article makes no sort of figure whatever in the opinion delivered; and, by *construction*, one might presume they did not see it. It is, however, very clearly expressed by this clause of the contract, that Kentucky, after the expiration of six years, for a failure upon the part of non-residents to cultivate or improve any of the land within her boundary, belonging to them, might properly and justly subject such lands to forfeiture, or might affix any other penalty she, in her sound discretion, should think fit.

Now, sir, a question necessarily presents itself, not for the consideration of the Supreme Court, for they have made their final decision—Are those occupant laws as rigid, as severe, as hard, in their operation against non-residents, as a law creating forfeiture of land, in pursuance of the power unquestionably given to Kentucky, in the foregoing clause? Surely not. Kentucky, then, for adopting the measures which she has done to protect her citizens, has manifested a greater forbearance in relation to non-residents than the court has given her credit for. She has refused to extend her powers of legislation, so as at once to put an end to all controversies, with which she has been so much oppressed.

Mr. Chairman, said Mr. L., the construction given by the court to the third article of the compact is wholly inconsistent with the stipulations contained in the fourth. It renders the latter null and void. It defeats the very object and purpose which each of the contracting parties had in view. It confers all the benefits of the agreement upon one side, without any corresponding advantage on the other; one party gets all, the other nothing. Such was not the wish and understanding of those who formed the agreement. In a few years after its date, the first occupant law, it will be seen, was adopted by Kentucky. Her course of policy was not a matter of secrecy; Virginia was apprised of it, and fully acquiesced in its justice. No murmuring or complaining is heard of. Had then the course of legislation upon the part of Kentucky have been so highly unjust—so entirely in opposition to her agreement—is it not fair to presume, when the whole subject was fresh in the recollection of all, that some dissatisfaction would have displayed itself? No official communication, however, is sent to Kentucky, alleging a breach of faith. Again, in confirmation of the right to pass these several laws, we have a long course of legal decision, by the inferior and appellate courts, for the last twenty-five years; by judges, too, whose firmness, intelligence, and legal acquirements, are in no manner lessened in consequence of the Supreme Court's declaration, in this same opinion, that the Kentucky courts may have made such and such decisions, but they had never seen them. These judges,

whose decisions are treated so cavalierly, sir, (it might be said in strict truth,) would not fear a comparison of legal skill, even with their *Supreme Honors*. We have, sir, in support of our laws, our Legislature, our lawyers, our judges. Indeed, more—we have the disinterested and concurrent testimony of other gentlemen, not citizens of the West, high, very high, in legal reputation, who are practitioners before the same court, most decidedly upon our side of the question.

Now, Mr. Chairman, look for one moment to the effects and consequences of the construction contended for by the court. Kentucky comes into the Union—how? Possessed of equal rights and privileges with the other sovereign States? No; a mere appendage; in no better situation than when a district, without the ability of regulating her own internal concerns. Her expectation was to be ranked among her sister States as an equal. But, how wofully has she been disappointed! Now, she is told for the first time, she surrendered and relinquished all pretensions of that sort long since. *Construction* brings about all this. Yes, construction! Its mighty powers are irresistible; it bears down every thing before it; it creates new principles; it infuses the spirit of the common law into a contract, against the will of both parties; it destroys laws long since established; and it is daily acquiring new strength. From this case, and others to which reference might be made, the result is plain, that, unless some regulation is made, and some necessary and salutary restraints are adopted, the Supreme Court, by its extensive jurisdiction, as it now exists, will finally draw into its vortex all State authorities.

My proposition, Mr. Chairman, is not of a mere theoretic and speculative character. It introduces no new and dangerous principle. If you desire to amend your constitution, it cannot be done unless by a concurrence of two-thirds of all the States. If, upon the passage of any bill upon your table, the President of the United States chooses, in the exercise of his constitutional privilege, to put *his veto* upon it, what is the result? It is returned with the objections, and cannot be incorporated into your statute book, as a law, without a majority of two-thirds of both Houses concur in declaring it shall be. But a minority of your Judiciary, upon the most solemn and important questions, involving the rights, the interests, and prosperity of a whole community, can so expound laws and constitutions, as to prostrate all State rights! This, sir, most certainly is an evil which may be remedied by judicious and prudent legislation. It is an evil which is growing rapidly, and which, if not checked, will produce very serious discontent.

Sir, said Mr. L., the resolutions which I have the honor of presenting for the consideration of this committee, cannot, I apprehend, endanger the dignity or importance of the judges. Their firmness will not be weakened; their

intelligence will not be affected; their reputation will not be impaired by their passage. I would agree to no proposition which had for its object such results. It is indispensably necessary, in every well-regulated Government, to have the most enlightened judiciary, prepared at all times to do their duty, without fear, favor, or affection. A timid, time-serving court, in any country, is worse than a nuisance. But, sir, in legislating upon this subject, let it not be forgotten that judges, at last, are but men; perfection and infallibility are properties which do not attach to them. Let us, therefore, increase the chances of a correct decision upon such occasions as are embraced by the resolutions, by requiring five to concur.

Mr. Chairman, how does the matter stand, according to the present state of facts? You have now seven judges upon the Supreme Bench; four constitute a quorum. Say three are absent, upon some constitutional question which comes before that tribunal, vitally important. The arguments are heard; three concur in declaring the law unconstitutional—one *dissents*. The judgment of the court below is reversed. A decision is obtained in this way by a *minority*. One of the judges writes his opinion, and two hear it read, perhaps, say *agreed*, as we often do in this House, without knowing the question—more for the sake of form, than substance. Their decision goes out, is published, and is received by the State courts, as binding authority. Suppose, at the next term, all the judges are present,—a similar question is again before the court; the absentees concur with the one judge who dissented upon the former occasion. What, then, is the consequence? You have two contradictory decisions in relation to the same subject-matter—both sent out as a sound exposition of constitutional law, as precedents for the country. One decision determines A shall have this property; another declares B, whose cause was precisely such a one as A's, shall not recover in his case. Thus stood the cause from Kentucky; four judges present—three concurred in believing the laws involved in the controversy were against that clause of the Constitution of the United States, which declares, among other things, that no law, impairing the obligation of a contract, shall be passed. One dissented. Try the weight of intellectual authorities pro and con.; put them in the scales—which will preponderate? The judge who dissents, most assuredly is at least equal to one of the three who concurs in the decision. There are then two left in the balance. I will not stop to inquire whether they were likely to understand the kind of case submitted to their consideration, involving intricate doctrines, in relation to a species of land-titles with which they were in nowise very familiar. Let it be conceded, for the sake of argument, that they deserve to be ranked amongst the most enlightened jurists of the country—you cannot, however, make more

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than two upon that side of the question. Look to the opposite scale—and what have we? The Legislature of a whole State, year after year, have asserted, in the most unqualified manner, their constitutional right to enact these laws. They so decided, upon mature deliberation, not influenced by excitement. All the judges of all the courts have, by a long course of decision, without exception, maintained the same power; they have done so, after having repeatedly given to the subject the fullest investigation. Two judges of the Supreme Court, strangers, in every sense of the word, to the subject, have asserted no such right existed. Upon whose decision would you place most reliance? Which is entitled to the greatest share of confidence—that of the two, or the collected wisdom of a whole State, both of the political and the legal kind? Which, under all the circumstances, is most likely to be correct? The answer is by no means perplexing. One leading principle in all our institutions, is, that a minority in the exercise of any official duties shall not control. But, in this instance, there is a departure from the rule; a minority has given an exposition of the constitution, upon a question of the first magnitude, which is to be acknowledged by all as correct doctrine, and treated accordingly. Can this be right? Is it according to the spirit and genius of our Government? But what is there objectionable in requiring five to concur, before any law of a State shall be held null and void? There is more safety in such a regulation than to leave it as it now stands. You may rest assured, sir, the States would be much better satisfied with a decision unfavorable to their laws by five judges than by two or three; and should it become the duty of the court, in the administration of justice, to make such decisions, five will not hesitate to do it. There is little or no danger of the judges of the Supreme Court being under the influence of the several States. The danger is altogether upon the other side. They are not dependent upon the States for their office, or the emoluments of it. No reason does or can exist, therefore, to suppose that the judges of this court ever did, or ever will, lean in favor of the States, against the General Government.

Mr. FORSYTH offered the following amendment, as a substitute to the first of the above resolutions:

*Resolved*, That a quorum of the Supreme Court, to transact the business of that tribunal, should consist of such a number of the Justices composing it, that a majority of the quorum shall be a majority of the whole court, including the Chief Justice.

Mr. FORSYTH supported his motion in a short speech; and Messrs. WICKLIFFE, CLAY, FORSYTH, WEBSTER, MERCKE, P. P. BARBOUR, RANDOLPH, and TRIMBLE, respectively, spoke at considerable length on the question.

Mr. WICKLIFFE addressed the committee, in substance, as follows:

Mr. Chairman: The subject is an important

one, and on that account alone, I hope to engage the attention of the committee in its discussion. Some of the friends of the measure on your table, were inclined not now to press it, under the belief that the time was unfavorable to the full and free discussion which its magnitude demanded. The duty of those, charged by the remonstrance with its presentation here, required, at their hands, an effort in furtherance of the views of the Legislature of Kentucky; and I am gratified to discover a wish in the committee that the debate should now progress.

The character of this question, which proposes an important modification in the judiciary act; the deep interest which one of the States feels upon the occasion; require of Congress an indulgent, and, I hope, a favorable consideration of the resolutions submitted by my colleague, (Mr. LETCHER.) Were it a subject in which the State of Kentucky was alone interested, her representatives on this floor would regard the determination of the committee now to progress with its discussion, more an act of kindness to them than a matter of right. But it is one involving a principle of vital importance to the whole Union; and, although presented to us by a single State, (inferior to none in the practice and support of Republican principles,) it demands of Congress a dispassionate deliberation.

I will not unnecessarily consume your time, and I hope not to exhaust your patience, whilst I endeavor, in a few words, to call your attention to the true character of the question presented by the remonstrance and resolutions now before us.

It may not be improper, in order to arrive at that object, to state some of the causes which have brought them into existence, and forced them upon our attention. You are informed, by the memorial of the Legislature of Kentucky, accompanied by the decision of the Supreme Court of the United States, (of which it complains,) that the power of that State to pass certain laws, denominated the Occupying Claimant Laws, is denied by that court; that they violate the compact between the States of Virginia and Kentucky; and, therefore, impugn the 10th section of the 1st article of the Constitution of the United States, which declares, among other things, "That no State shall pass any law impairing the obligation of contracts." A question naturally presents itself to the mind of every person unacquainted with the history of Kentucky and her internal police: "Are these laws of such mighty importance as to call forth, in strong language, the feelings of the Legislature? Are the principles settled by the case of Green and Biddle, and the evils which flow from that decision, such, that the Legislature of Kentucky cannot, by some modification of the laws in question, avert or palliate them?" I answer, Yes; such is their character. They are laws rendered necessary to the prosperity and happiness of the State, by the

fatal policy pursued by Virginia, in the disposition of her vacant lands, in the then district of Kentucky. And if the court be correct, to the extent of the principles assumed in that opinion, no legislative aid, no change or modification of these laws, can avert or palliate the miseries which must inevitably ensue. The people, in the exercise of their high and sovereign powers in convention, cannot rid themselves of the effects of the principle settled by the Supreme Court; which principle is fixed like an incubus upon the rights of the State. We can do nothing but present our grievance before you; point to the injury which has been inflicted; and beseech you to adopt the measure on your table, and thereby strengthen the ramparts of State sovereignty. It is by the preservation of legitimate State rights, that you give the best security to the stability and happiness of this Union.

I said, sir, these laws were rendered necessary to the prosperity and happiness of the citizens of Kentucky, by the misguided policy of Virginia; a policy ruinous, but liberal, benevolent, and patriotic in its objects. With the exception of the delegation of Virginia and Kentucky, but few, if indeed any, of the members of this House are acquainted with the mode by which lands were acquired, and are now held, in the latter State. Prior to the Revolution, large portions of those lands were granted by the Crown to the officers of the army engaged in the French and Indian wars, which preceded the Declaration of Independence. Toward the close of the Revolution, many persons, as if in quest of danger, penetrated the wilderness; and after many dire struggles with the savages for empire, maintained with loss of much blood their infant settlements. Virginia, (in a spirit of justice to her creditors, and in fulfilment of that pledge of public faith of which she has always been proudly tenacious,) after securing to the early adventurers and settlers in Kentucky, what are called "settlement and pre-emption rights, poor-rights, and corn-rights," (terms well understood by the citizens of Kentucky,) opened her land office, 1779-'80; and by it she poured out the contents of a Pandora's box upon the ill-fated inhabitants of the State. By the provisions of the land law of 1779, warrants for land were issued to any and every person, upon the payment of the State price in the paper currency of Virginia. The proprietors of these warrants were required to locate the same by an entry in the surveyor's books, with such certainty and precision, that each subsequent locator, in like manner, could appropriate the adjacent residuum. I am certainly correct, when I tell you, that warrants for three times the quantity of vacant land, then owned by Virginia, in the district of Kentucky, were issued. In many districts of country in Kentucky, I have known to exist there, four, five, and six, distinct adversary claims to the same tract of land. Hence the phrase, in frequent use, "that Kentucky is shingled with

land claims." Many of these claims were settled by the original proprietors and first adventurers to that country; men who had to contend with dangers, and endure sufferings, not easily to be imagined by the present population; and more easily conceived than described by those who witnessed and participated in them.

In this state of things, removed at a great distance from the seat of government in Virginia, laboring under difficulties and embarrassments, which were not felt and duly appreciated by the great body of the people of Virginia, the citizens of the then district of Kentucky petitioned the Legislature of Virginia to permit them to become a free and sovereign State. The politicians who filled the public councils of the State, at that period, upon becoming more intimately acquainted with the wants, interests, and difficulties of the people of Kentucky, were satisfied that their future happiness and prosperity depended upon the favorable issue of their application.

In 1789, a law passed the Legislature prescribing the conditions upon which this new government was to be established. This is what is termed, in the decision of the Supreme Court, "The compact with Virginia." By the seventh section of that compact, it is provided that all private rights and interests of lands within the proposed district, derived from the laws of Virginia, prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now in existence in this State.

The latter clause of the eighth section reads as follows: "Nor shall a neglect of cultivation or improvement of any land within the proposed State, or this Commonwealth, belonging to non-resident citizens of the other, subject such non-residents to forfeiture, or other penalty, within the term of six years after the admission of the said State into the Federal Union." These are, substantially, the only parts of the compact which have any connection with the present subject. This compact is made a part of the constitution of Kentucky. The Supreme Court, in their opinion, do not decide upon it as a part of the constitution of the State, but as a contract between the State of Virginia and the State of Kentucky. Whether this act of the Virginia Legislature can be denominated a contract, within the meaning and purview of the tenth section of the first article of the Constitution of the United States, which prohibits "a State from passing laws impairing the obligation of contracts," is a question I leave for others to decide. It is not necessary for my purpose that I should here discuss it. Virginia, at the date of the compact, had no statutory provision similar to the occupying claimant laws of Kentucky. She had not then felt the necessity of them—circumstances since that time have made it necessary for her to protect the occupants of her land under a practice adopted by her courts, not very unlike the laws of Kentucky.



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I believe many States in the Union have been compelled to resort to such laws. As early as 1796, Kentucky commenced her legislation upon this subject. Her best and wisest statesmen projected and approved the law which was then enacted. This law provides, in substance, that if any person shall peaceably, and in good faith, seat and improve lands, to which he shall have a title derived from the Commonwealth, upon eviction therefrom by a paramount title, he shall be paid for all valuable and lasting improvements which he shall have made upon the land before notice of the adversary claim, and subjects the occupant to the payment of rents and profits, after suit brought; and also compels him to account for all waste, &c., committed upon the land; and to pay for the deterioration of soil. Is there any thing unjust or iniquitous in this law? I answer, no. It received the sanction of the courts of Kentucky, and was acquiesced in by all classes of her citizens. There was no murmuring, no denial of the power in this State to legislate upon the subject, from 1796 to 1811 and 1812, at which period the act of 1796 was repealed, and that of 1812 passed. Then it was, for the first time, I believe, made a question of constitutional power in the State. The law, however, passed, not without a violent opposition, by a respectable and intelligent minority, who, I believe, were governed more in their opposition by the question of policy and expediency, than constitutional power.

It is due to candor to state this law did not receive the sanction of the Governor of the State. It was suspended for twelve months. Its principles were the subject of free and full discussion before the people; and at the succeeding Legislature it was passed by a constitutional majority of both branches, the Governor's objection notwithstanding.

This latter act exempts the occupant from the payment of rents and profits, until after judgment of eviction or decree shall be pronounced against him. It compels the successful claimant to pay the cost of seating and improving the land; and moreover provides, that, if the valuation of the improvements shall exceed three-fourths the value of the land in its unimproved state, then the successful claimant may compel the occupant to keep the land, and to pay for the same the amount of valuation fixed by commissioners to be appointed by the court. These commissioners are directed to make the estimates, as well of the rents, profits, and value of the land, as the costs of seating and improving the same, together with the waste and damage committed, and reduction of soil. The report of these commissioners upon oath, (seven in number,) was to receive the sanction of the court, and to be made the basis of their judgment. Until the court had thus disposed of the question of improvements, &c., no writ of possession could issue upon the original judgment. Such are

the outlines of the two acts of the Legislature of Kentucky, passed under a most thorough conviction that she possessed the power, and deeply impressed with the belief, that they were demanded by the condition of the country.

And, whatever may have been said about the infraction of constitutional law, the purity of the motives of the Legislature who passed, and the judges who approved their adoption, has never been, cannot be, questioned. It requires the efforts of refined legal subtlety to demonstrate clearly the unconstitutionality of these laws. The eighth section of the compact permits the Legislature of Kentucky, after six years, to subject the lands of non-resident proprietors to forfeiture for non-cultivation. From this clause it seems a mild power might be inferred—one of less magnitude—a power which, by its exercise, saves to the non-resident his land from forfeiture for non-cultivation, by requiring him to pay the meritorious occupant for doing that which the State had a right to compel him to do, viz: the improvement of his land within her territory. The delay incident to the investigation and trial of a land cause, (to say nothing of the designed procrastination of it by the artful claimants, with a view to swell the item of rents on the final account,) furnished a very just reason for a change or repeal of the act of 1796.

Suits have lingered upon the dockets for twenty years, and, in some instances, longer. Under the act of 1796, the occupant was charged with the rents after the commencement of the suit; and it not unfrequently happened that, after losing his home, and his labor of twenty years, he was ruined by a demand for rents of land which he believed to be his own. It was thought the act of 1796 was defective in other respects. The number of suits was continually increasing, and the occupants not only feared the loss of their lands and improvements, but ruin by a claim for back rents. The gradual improvement of the country was consequently retarded.

I have been thus particular, Mr. Chairman, (and, I fear, tedious,) in order that the committee and the public shall understand the nature and character of those laws. I am anxious that the councils of my State shall be acquitted of all impurity of motive.

If I have given you a correct history and character of these laws, (and I believe I have,) you will acknowledge that Kentucky ought to feel on this subject; and she has, through her Legislature, expressed that feeling to the nation.

Not long after the passage of the act of 1812, its validity was questioned in the appellate court of the State. The judges of that court, men of intelligence, and who, as jurists, would not be shaded in a comparison with the justices of the Supreme or any court, decided, not by a minority, but by the undivided opinion of the whole court, that the Legislature had the power to pass the law of 1812.



This decision, supported by reasons irresistible, the Supreme Court (although the book which contained it was in the Library of Congress, to which they had unlimited access) say they "*have not had an opportunity of examining it.*" It was not my purpose, nor is it required of me, by the nature of the proposition on your table, to maintain the validity of those laws; nor will I indulge an uncharitable opinion of those whose interest or duty it was to contest them. I am only anxious to evince to the committee their importance, and to satisfy them they were not the enactments of hasty and inconsiderate legislation, but the productions of soberness and reason, dictated by a sound policy, imperiously demanded by necessity, and approved by the judgments, not only of the people, but the Legislature and the courts of the State. When laws of so much importance to the prosperity and happiness of a State, sanctioned by successive Legislatures and courts, consisting of judges of great talents, shall have been prostrated by the opinion of three justices, however learned and dignified, it becomes the duty of the States to inquire into the expediency of so organizing that court that more security shall be given to their respective rights. The opinion of the Supreme Court in the case of Green and Biddle may be correct; it is, nevertheless, unsatisfactory and afflicting to my constituents; nay, sir, to the whole State—unsatisfactory, because it is the opinion of a minority of the members of the court, without the aid of its *head*, opposed to the opinion of the Legislature, and the inferior and superior courts of the State; afflicting, because the character of the State has been traduced—not by the court, but by those who, like the justices, were unacquainted with the real condition and character of the people for whose safety and protection these laws were enacted. I will not contend, as some have done, that the case of Green and Biddle was not legitimately before the court, nor that it was an act of usurpation in the court to have assumed jurisdiction of the cause. The question involving the validity of these laws was fairly presented to the court for its decision. I admit the right and the power of the Judiciary to decide upon constitutional questions; and, when fairly presented, it becomes their duty to decide them upon their constitutional responsibility. I am desirous, therefore, that, whenever the occasion arises for the exercise of this high and important power by the Judiciary, it shall be exercised in the mode best calculated to administer justice, and inspire confidence in the public mind. What better mode can you adopt, combining these two great subjects, than the one suggested by the resolutions offered by my colleague?

The prostration of those laws, so indispensable to the prosperity of the State; laws which secured to the industrious occupant, should he be unhoused by a better title, an indemnity for

his labor bestowed upon the land; and of a policy, existing for twenty-five years, sanctioned by a large majority of the Legislature; approved and sustained by the unanimous decisions of the supreme court of the State; made the basis of numerous compromises and contracts, was well calculated to produce a shock in public feeling, and to call forth the almost unanimous voice of the whole State, against the correctness of the opinion of the three justices of the Supreme Court.

I have said the power to decide upon constitutional questions, involving the validity of the laws or constitution of a State, appertain to this court. Yes, sir; they have the power, not only to fritter down the sovereignty of the State governments, but to set at defiance the legislative powers of Congress. It is necessary that the power to decide upon constitutional law should be vested in the judiciary; and it is the duty of the Representatives of the people to watch, with a vigilant eye, its exercise. I do not mean to say that the power, in this case, has been intentionally abused. Its exercise, however, by a minority of the court, has spread dismay over the whole State. In ordinary cases, where the Legislature may have trespassed upon the confines of the constitution, and the encroachment is repelled by the judiciary, reform and amendment may take place. Was this the condition of Kentucky: did the decision leave a hope that any future legislation upon the subject, even in conformity with what Virginia, since the compact, has prescribed for her own citizens, was permissible, we should not feel so sensibly the effects of the opinion of the court. The court deny to Kentucky the right to legislate in reference to this subject. Virginia has parted with the soil and sovereignty: she cannot, therefore, legislate; nor can the two States, by any alteration of the terms of the compact, (if the decision be correct,) resume the power in themselves, jointly or separately, to legislate upon the question of land titles acquired prior to 1792, in the State of Kentucky.

Did Virginia possess the power, and were her statesmen made acquainted with the real condition of those for whose benefits those laws were passed, I know that she estimates too highly the blessings of a free Government, to refuse relief, such as that extended by the Legislature of Kentucky, to those whose lands were lost by adversary titles.

Kentucky has no hope that she can be relieved by any act of Congress, from the evils which the misguided policy of her parent State forced, and the decision of the Supreme Court has riveted, upon her. She must, and she will, with that firmness and patriotism with which she has been hitherto characterized, maintain, under all circumstances, her attachment to the Union, her reverence for the constituted authorities of the Government. She has never deserted the General Government, nor is she willing to be abandoned by it.

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Mr. TREMBLE, of Kentucky, wanted to say a few words, and would detain the committee only a few minutes. He thought the subject might be placed in a new aspect, as important as any that had been given to it. What, said he, is the question; and how does it come before us? A compact exists between the States of Virginia and Kentucky. A citizen of Kentucky, holding a title to land there, under the laws of Virginia, or a non-resident (say a citizen of Virginia) holding in like manner a title to lands in Kentucky, derived from the laws of Virginia or Kentucky, brings an action at law or suit in chancery for the land, and obtains a judgment or decree in his favor, under which he is put in possession of his right. The occupant, who was sued, holds a title of record for the same land, derived under the same code of laws, which title he exhibits to the court, and thereupon demands payment for the value of the lasting improvements made by him on the land, and requires an assessment of the value of those improvements under the laws of Kentucky, usually called the "Occupant Laws;" the adverse party contests the right of the occupant to claim payment for his improvements, upon the plea that the Occupant Laws are in violation of the compact between the two States. The Supreme Court of the United States and the inferior courts take cognizance of the case under the second section of the third article of the Federal Constitution, in which article we find the following clauses, among others, viz: "The judicial power (of the United States) shall extend to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects." And thus the right and power of the State of Kentucky to pass the Occupant Laws, and the validity of the laws themselves, are drawn in question before the Supreme Court. Mr. T. referred to the case of Green and Bidle as an example, the details of which would be found in the remonstrance from the Legislature of Kentucky. It was known, he said, that only four of the seven judges sat in that case, three of whom were of opinion that the State of Kentucky had no power to pass the Occupant Laws just referred to, and the other judge dissented; so that, in point of fact, only three judges concurred in the opinion declaring those laws invalid. In this respect it is a question of State powers and State rights, and he would like to know when and how a minority of the Supreme Court became possessed of the power to decide against the validity of a State law? Was it right to suffer a minority of the court to exercise such broad powers? The friends of State rights insist that a law of Congress ought to pass, declaring that no decision shall be given by the court in such cases, unless a majority of all the judges shall concur in it.

His own opinion, looking to the policy of the question, was, that the law ought to require a concurrence of at least five of the seven judges, if not all of them. Would any member show him a solid objection to that number? Look, said he, at the root of the question: each State has plenary power—legislative, executive, and judicial—over all its municipal concerns. The power of each is paramount within its own limits, except in those cases where all have brought themselves under Federal subordination. The States grant to Congress and the nation the supremacy over certain enumerated subjects, and they retain the supremacy over all other subjects. Now, suppose the States to be yet independent of each other, and foreign to each other, as they were before the Federation; how would two or more of them decide a dispute between them, or between their citizens? Exactly as all sovereigns have done, and are compelled to do—abandon the dispute, or settle it by making war, or by reprisals, to enforce the right, or by sending ambassadors to make a treaty of settlement and compromise; or by referring the matter in contest to friendly sovereigns as arbitrators. But the framers of the constitution foresaw that Federal and State rights and powers might come in conflict with each other, and that controversies might arise between two or more States, or between a State and citizens of other States, or between citizens of different States; and they knew that the system of Federation would be incomplete, unless some mode could be devised by which such disputes could be peaceably adjusted, because they must have known that such disputes had dissolved and destroyed all the old confederations of the old continents. Two modes of adjustment were suggested: first, to leave each State the right of naming friendly arbitrators upon each contested question as it should arise; and, second, to constitute a body of perpetual arbitrators. The first mode was in use among the ancients, and the last was once in use, and probably yet is, among the Swiss Cantons. It is the mode adopted in our constitution; the power is vested in the Supreme Court, and its subordinate courts, and the judges are constituted a perpetual body of friendly arbitrators. He called them *friendly* arbitrators, because there was no magic in the word *judge*—all judges being nothing more nor less than friendly referees. The court takes the place of friendly sovereigns, and are agreed upon beforehand to determine certain high disputes, which, if that provision had been left out of the constitution, would have been settled by war or by treaties, as among other sovereign powers. But the constitution itself is in the nature of a treaty; it is an agreement—a solemn compact—a compact of union—a perpetual treaty of union—and therefore he thought it strictly proper to say, that the States, and the people of the States, had stipulated and agreed that the judges of the Supreme Court should be friendly arbitrators,

to determine all controversies arising in the class of cases enumerated in the second section of the third article of that instrument; and here the main question comes forward: How many of these arbitrators ought to concur in a decision, where the validity of State laws are disputed? Shall all concur, or a bare majority; or some intermediate number; or can a minority decide? We are here debating the proposition, but no one ventures to defend the propriety or policy of letting a minority exercise the power. Shall it be left to a bare majority? Can we deduce a sound rule from the theory or practice of our Government? The constitution is silent on the subject. It declares that—"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish." The Federal courts were established by the law of September, 1789, and that law enacts that the Supreme Court shall consist of one Chief Justice and five Associate Justices, any four of whom are declared to be a quorum to do business; but it omits to say how many shall concur in giving a decision. That omission, however, was supplied by the compulsive operation of the law: If the six judges sat in a case, three of them could not decide against a State law; but if four of them were ready to concur, the court could then give judgment; but four is two-thirds of six; and so, from the necessity of the case, a State law was not invalidated until two-thirds of all the judges were against it. If only five judges sat in a cause, three, being a majority of five, could render a decree; and if only four sat, three of them must concur, or else the court would be equally divided; and thus it happened from necessity that no decision could be made against a State law, unless two-thirds of the whole court concurred when all sat, or three-fifths when five sat, or three-fourths when only four sat. And here he entreated gentlemen to remark, that no state of things could possibly occur, in which a minority of the whole court could invalidate a law. The conformation of the court put it out of the power of the body to encroach upon State rights by the invalidation of State laws. By the act of February, 1807, the court is to consist of seven judges, but no further regulation is made in that law, and of course four continued to be a quorum to do business. But as three is a majority of four, or of five, and a minority of seven, it is obvious, that when only four or five of the judges sat in a cause, a minority of the body could invalidate a State law. The act of 1807 ought to have directed how many of the judges should concur upon questions touching State rights, but it was then neglected, and Congress is now called upon to supply the omission. Shall we leave the court to regulate itself, or shall it be put "under such regulations as the Congress shall make." How shall we find a rule? By analogy, by looking into the theory and practice of the Federal Government and the State Gov-

ments, by consulting the reason of the thing, by following the dictate of sound policy.

*By analogy:* State powers and State rights are put in question, and therefore the case of two sovereigns, referring a matter in controversy to other friendly sovereigns, bears a close analogy. It would be called, at the bar of the court, a case in point; and yet there is not a case to be found in all the books of international law, wherein three or more friendly sovereigns have decided a dispute referred to them, unless all of them concurred in the opinion. In such cases, an award by a minority, or a bare majority, would be pronounced as an outrage upon the parties making the submission. No sovereign would submit, and no nation ought to submit, to an umpire of minorities. Mr. T. again asserted, that by our own constitution, the judges are put in the place of friendly sovereigns, acting as referees between sovereigns, so far, at least, as State rights and State laws are drawn in question before them, and that, therefore, they ought to govern themselves by the rules and usages adopted by those who arbitrate between sovereigns. These rules would require a concurrence of all the judges, and he thought it quite probable that the time would come, when those rules would have to be adopted. Take the case of a reference in court, to three arbitrators, by consent of parties; all of them must concur in the award, unless the order of reference specially declares that any two of the number may decide the matter. From this, and similar cases, he argued, that all analogies required a concurrence of the whole body of judges or arbitrators. In all the State constitutions, there are clauses declaring what number of members shall form a quorum to do business in the legislative body; and why? Because it is generally understood that, without such a clause, none of the members could rightfully act until all were present. A similar clause, he said, would be found in the Federal Constitution.

On motion of Mr. McKim, the committee rose and the House adjourned.

TUESDAY, May 4.

*Deaf and Dumb Asylum.*

Mr. MOORE, of Kentucky, from the committee appointed on the memorial of the trustees of the institution for the instruction of the deaf and dumb in the State of Kentucky, made a report on the said memorial, accompanied by a bill for the benefit of the said institution; which was read twice, and committed to a Committee of the Whole. The report is as follows:

Your committee entered upon the investigation of the subject referred to them, deeply impressed with the conviction that the great object of human legislation is to promote the happiness, as well as the security of the species. Its legitimate sphere extends beyond the erection of fortresses, the creation of military and naval armaments, fiscal arrange-

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*Navigation of Western Rivers.*

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ments, the punishment of public crime, and the reward of public virtue; and it is, when it interposes its benignant power in behalf of those domestic institutions, which are formed to alleviate the ills which originate in the infirmity of our nature, that its advantages are most generally felt and acknowledged by the mass of society. In the infancy of nations, indeed, institutions of this character are so limited in number and extent, as to claim but little attention, because the necessity of them is less obvious and imperative. But, as wealth, refinement, and population increase, bringing in their train a melancholy series of casualties and anomalies, the necessity of some provision for human infirmity becomes more apparent, and charity finds a rapidly expanding area, in which she may exercise her godlike propensities. For evidence of this truth, we may appeal to the universal history of civilized nations, as well as to the annals of those States of our Commonwealth, which have made the most rapid progress in population. If institutions, precisely similar to that to which the attention of your committee has been called, are less numerous, and of more recent origin, than other receptacles of human misfortune, these circumstances may be attributed, partly, to the relative paucity of cases, partly to an amiable weakness, which has prevented parents from banishing their children, thus affected, from the cheering comforts and endearments of home and kindred, and partly to the incredulity which has so long prevailed on the subject of any effectual alleviation which the skill of man could devise and apply. The influence of these causes has, however, been, for some time, diminishing. The fame of the philanthropic Abbé de L'Eppée has reached the utmost limits of the civilized world, and humanity triumphs in the conviction that, even in cases which come so entirely home to the "bosoms and business" of mankind, the imperfections of our nature may be, in some degree at least, corrected by the skill and perseverance of science and of art. Entertaining these general views, your committee admit neither difficulty nor hesitation, in applying them to the case which has been referred to their consideration.

The Kentucky institution for the tuition of the deaf and dumb, appears to your committee to have strong claims on the protecting benevolence of Congress. It is the only institution of the kind existing in all that vast and fertile range of country which lies west of the Alleghany chain of mountains. Institutions of this description can never, for reasons which we deem sufficiently obvious, become so general, even in the diminished ratio of the number of persons for whose benefit they are founded, as those which have for their object the instruction of the more favored, and, happily, far more numerous portion of our species. Your committee, therefore, believe, that the National Legislature would pursue a wise policy in adopting as its own, and cherishing by its protecting care, a few establishments of this kind, already in successful operation. Applications have already been made for the admission of pupils from many of the circumjacent States; nor have such applications been made in vain. Kentucky, forgetting her inability, in the zeal and fervor of her philanthropy, has placed the unfortunate sons of her sister States upon an equal footing with her own. The aid solicited by the petitioners is a boon asked, not for a single member of the Confederacy, but for a whole

section of country rapidly increasing in population and resources, and justly entitled to the attention of Congress. The deaf and dumb asylum was incorporated and endowed by the Legislature of Kentucky, in 1822, and went into operation in the spring of the following year. At the late session of that body, a most respectable committee, composed of two members of the Senate, and four of the House of Representatives, was appointed to visit and examine the institution. In their report they say, "that they remained in Danville, and visited the asylum on two successive days, and were greatly gratified in witnessing the progress made by the pupils, whose facility and correctness in comprehending the signs made by the teacher, and in expressing their ideas, exceeded any thing that could have been anticipated by the most sanguine friends of the institution. All those who had been instructed for four months in the asylum, wrote good hands, spelled correctly, &c." And the committee, after noticing, in the highest terms of approbation, the administration of the institution, concluded by recommending it "to the continued and extended patronage of the Legislature." The number of pupils, at that time, was fourteen; five more were expected in a few days, and it was anticipated that, in the course of the present year, the whole would amount to forty. The trustees have ascertained that more than one hundred and thirty persons in Kentucky needed the benefits which that institution alone could confer, and of these more than one-third could receive them only from public munificence. It is believed that the number of cases in the adjacent States will bear a like proportion to their population. Under these circumstances, the following resolution passed both Houses of the Kentucky Legislature: "*Resolved*, That a respectful memorial from the Legislature be transmitted to the Congress of the United States, on behalf of the Kentucky Institution for the Tuition of the Deaf and Dumb; soliciting their attention to the petition of the trustees of said institution for the aid of the National Legislature." From some cause, unknown to us, the memorial thus ordered, was never presented by the committee appointed to prepare it. Your committee find that the principle and policy of extending relief to institutions of this character, have been recognized by the Congress of the United States, in a grant made to the Connecticut Asylum, and in that case they discover a strong precedent to justify the passage of a bill for the benefit of the Kentucky Asylum. They, therefore, beg leave to report a bill.

FRIDAY, May 7.

*Navigation of Western Rivers.*

Mr. HENRY, of Kentucky, moved to postpone all previous orders of the day, to go into Committee of the Whole, on the bill "for improving the Ohio and Mississippi Rivers;" and a bill "for deepening the harbor at Presque Isle, and for repairing Plymouth beach;" which was carried—ayes 69, noes 46.

The House went into Committee of the Whole on these bills, Mr. MARKLEY in the chair.

Mr. HENRY, of Kentucky, moved to strike out the two first sections of the first of the above bills, and insert the following:

"That the President of the United States is hereby authorized to take prompt and effectual measures for improving the navigation of the waters of the Ohio River, by causing channels to be cut through all the bars which cross the current of said river, from Brownsville, in Pennsylvania, to the Mississippi, upon which said bars there shall not be, at the lowest stage, at least three feet water; or by causing dykes or sluices, or wing walls, to be constructed upon said bars, or by such other mode as, in each particular case, may be deemed most advisable."

Mr. HENRY made an explanatory statement of the facts, and of the nature of the plan proposed.

Mr. WICKLIFFE objected to the plan proposed in the amendment, and thought the improvement should be confined to the eradication of trees partially sunk in the river.

Mr. RANDOLPH coincided in this view, and stated the result of experiments on the Rappahannock and Roanoke Rivers.

Mr. HENRY replied, and defended his amendment.

Mr. CLAY suggested the following modification, viz: to strike out the clause which describes the mode of improving the river by dams, sluices, &c., and insert the following—"so as to insure, at the driest season, a uniform depth of three feet of water over each of said bars; and for this purpose, the President is authorized to employ any of the engineers in the public service which he may deem proper."

The amendment, thus modified, was agreed to, *nom. con.*

The blank for the distance below the surface at which the planters and sawyers shall be cut off, was filled with *ten feet*.

Mr. SCOTT moved to amend the bill in the fourth section, by including in its provisions the river Missouri.

The amendment was agreed to.

The blank for the sum to be appropriated was filled with \$75,000.

Mr. CLAY moved to rise and report the bill, and accompanied the motion with a series of observations on the circumstances of the case for which the bill provides.

The committee rose, and reported the bill concerning the navigation of the Ohio and Mississippi, and asked leave to sit again upon the other bill committed to it; which was granted.

#### *Five Millions New Stock.*

The engrossed bill "to authorize the creation of a stock to an amount not exceeding five millions of dollars, to provide for the awards of the commissioners under the treaty with Spain, of the 22d of February, 1819," was read a third time.

Mr. TIER addressed the Chair as follows:

I am called upon, by the bill upon your table, to vote away five millions of the people's money, and such is the repugnance of my mind to the feature and principles of that bill, that I feel myself called upon, by every consideration of justice and sound policy, to place upon it my

solemn veto. I shall endeavor to condense my ideas into as few words as possible, to render myself intelligible; and, although I cannot hope to change the opinion of a single member of this House, after the protracted discussion which the subject has undergone, yet I cannot feel that I shall have done justice to my country, if I pass it by in silence. The charge against the Government, to the extinguishment of which the moneys intended to be raised by the operation of the present bill is to be applied, arises out of a treaty concluded between the United States and the persons exercising the Government of Spain in the year 1819, wherein it is stipulated between the two powers, that "the Government of the United States shall pay to its own citizens a sum not exceeding five millions of dollars, for spoiliations committed upon our commerce, and unlawful seizures made by Spain, of the property of our citizens;" the payment to be made immediately, "at the Treasury, or by the creation of stock bearing an interest of six per cent. per annum, payable out of the proceeds of the sales of the lands in Florida, or in such other manner as the Congress of the United States may by law prescribe;" these payments to be made "after certain commissioners, named in the treaty, or a majority of them, shall have adjusted and allowed the claims," which claims, it is admitted on all hands, never have, as yet, been adjusted and allowed, and which have been under consideration about three years. The decision of this question depends in part upon the construction which may be given to the above clause of the treaty, and the policy proper to be pursued under that construction. Hence, two general questions present themselves for our consideration—1, What is the proper construction to be given to this treaty? and 2, What shall be a correct policy to be pursued under that construction? In the solution of the first question, it becomes necessary to inquire, what were the motives or causes which led to the making of, or entering into, the treaty? What is the nature of the obligation imposed upon the contracting parties? and lastly, What rights do the claimants derive under it? There are two leading causes or motives for making and entering into treaties between nations—one is of a nature mild and peaceable, for the extension and regulation of friendly relations already subsisting between the parties; the other is of a nature adverse and hostile, for the reparation of friendly relations which once subsisted between them, but which had been broken off, and for a redress of grievances which had occurred during the suspension of those friendly relations, and comes in place of war. In the last general class of causes, there may be various motives for entering into a treaty with a foreign power—as when you are totally incapable of contending on equal grounds, for the want of an adequate force, or the want of due preparation, or, where the nation with which you contend has nothing to

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indemnify you for going to war; and when, from their peculiar situation, to go to war with them would not add to your honor or your present or future safety; and, under all or any of these circumstances, the most powerful nation would find a sufficient motive, and be fairly warranted in making a treaty, inadequate to the purposes of equal retribution and indemnification.

The causes which led to the making of the treaty under consideration seem to be of the latter kind; that is, for the reparation of friendly relations which once subsisted between this Government and Spain, and for the redress of grievances which occurred during the suspension of those friendly relations; and is expressed in the treaty to be for spoiliations committed on our commerce, or "unlawful seizures made by Spain of the property of our citizens." As the causes or motives which led to the promulgation of this treaty are only adverted to as matters of reference in its construction, and as they are set out in the treaty itself, it would seem a waste of time (which has now become very precious) to go into a detail of the various aggressions which induced this Government to call upon Spain for indemnity, and more especially as every honorable gentleman in this House must be well acquainted with them.

The next inquiry which occurs is, what is the nature of the obligations imposed upon the contracting parties? Every treaty comprehends several duties or obligations. Those which arise between the contracting powers as bodies politic; those which exist between the citizens or subjects of those powers; those which subsist between the respective Governments, and the citizens or subjects of each power; and those which are common to the Government, and its own citizens or subjects. Without going very deeply into abstract reasonings, it seems necessary to inquire a little into the nature of Governments, to come to a correct conclusion upon the case before us. Man, in a state of nature, independent of all political regulations, is bound to act honestly toward his fellow-man, and to do him all the good he can without subjecting himself to an injury; hence, where one man in this state of existence does another an injury, that other has a right to indemnity in some mode allowed by the law of nature, and, under such circumstances, might redress his own wrongs. But, having entered into the social compact, he is precluded from doing so: and, being so precluded, he has a right to call upon his Government to do that for him which he is not at liberty to do for himself; but, at the same time that he has a right to call upon his Government to redress wrongs committed against him by other Governments or their subjects, he has no right to expect any other reparation than that which he himself could have obtained, with competent power to enforce his claim; or, in other words, he can have no claim to an indemnity from his own Government which would not have been

in the power of the aggressor to make. The examination of these principles will lead to a correct understanding of the obligation which the Government is under to those claimants for whose benefit the money in this bill is to be applied. Let us for a moment refer to the relative situation of the Government to those claimants, and see how they stand toward each other. It is a well-established, fundamental principle of the social system, that a man gives up a share of his natural rights and privileges, that he may have the remainder better secured to him; and one of those privileges which he surrenders, as before hinted, is his right to redress his own wrongs; and having given up that privilege, he has a right to expect of his Government to redress them, so far as shall be convenient and proper, taking into view every circumstance connected with its accomplishment. The Government, therefore, takes upon itself the task of redressing the wrongs of its subjects or citizens, agreeably to the principles before stated, keeping always in view the good of the whole community. Therefore, when it makes a treaty with an aggressing power, it is its duty to provide for its own indemnity and the indemnity of all its subjects, if convenient, and reasonably practicable; hence, it becomes a protector or guardian for them, not only to see that other nations do them justice, but to do them justice itself; and from this parental and protecting character, and none other, arises all the claims which its citizens or subjects have upon it; and for the purpose of carrying into effect all its functions with the greater facility, it is divided into departments, each of which has assigned to it certain limited and defined powers, and which every other department, as well as every citizen, is bound to respect, confide in, and submit to, so long as it acts within the sphere of its own authority; among these departments, or divisions of the Government, is the treaty-making power, and which is as perfect and absolute in the exercise of its various functions, and is entitled to as much deference, as any other power acting within the scope of its authority; and when that power has been exerted upon a particular occasion, its act is binding, not only on those immediately connected with the transaction, but upon the whole community.

Having examined the general powers of the Government, and its duties towards individuals who compose it, so far as they seem necessary for my purpose, I will apply those principles to the case before us, and see what will be the result. If I have laid down a single principle which is not substantially warranted by the authorities, or which will not stand the test of ethical analysis, I shall be open to correction and conviction by honorable gentlemen opposed to me. In this case, then, the Government of Spain has made unlawful seizures of the property of the claimants; this Government, as the guardian and protector of their rights, has interposed between them and Spain, and con-

cluded the treaty now under consideration, to indemnify and remunerate them for losses sustained in consequence of such unlawful seizures. For the clear understanding of the nature of the obligation of the Government to those claimants, it will be necessary to give the several clauses of this treaty a separate and distinct consideration. As it regards the adequacy or inadequacy of the redress secured by it to those claimants; or, in other words, whether it be a provident or improvident treaty, I conceive, is not a subject for our present consideration. If, however, I were to give an opinion, I should say we had a right to presume it was the best that could have been gotten at the time. There is no honorable gentleman in this House that does not know the deranged—nay, the miserable vassal and bankrupt condition of that nation at the time it was made. And, although it may suit some honorable gentlemen to decry the treaty and the treaty-makers, I am disposed to make the best of the one, and think the most charitably of the others. Yet, however improvident the whole treaty may be, and inadequate the redress to the claimants, it is not for us now to change the nature of the former, or make up the deficiency in the latter; a duty has devolved upon us to carry it into effect, according to the terms of it, as the treaty-making power has laid them down—for that having passed upon it, it is conclusive with us. It is a co-ordinate branch of the Government, it has its powers to exercise, and its duties to perform; and, having performed them, it is not for us to violate our trust by trampling upon its authority, even if it had acted wrong; for, by so doing, we should make ourselves *particeps criminis*. If the honorable gentlemen who signed this treaty have looked over the interests of these claimants, and have taken an insufficient indemnity, let the responsibility rest with them; let us do our duty, and carry it into effect, in the manner they have prescribed. It was their duty to make the treaty; it is ours to carry it into effect; according to its terms. The honorable gentleman from New York cannot see in this treaty a triple alternative; I think I can very plainly see a double one.

The language of the treaty is: "The Government may, after the commissioners shall have admitted and allowed the claims to an amount not exceeding five millions of dollars, pay them immediately at the Treasury, or in the creation of stock at six per centum per annum, payable from the proceeds of sales of the public lands in the territories ceded, or in such other manner as the Congress of the United States may prescribe by law."

If these, then, are the terms of the treaty, what is the duty of the Government resulting from it, as regards the claimants? It is the duty of the Government now to discharge its obligations to the claimants in good faith, according to equity and justice. Obligations between the Government and the people are like

all other obligations, and ought to be construed like them. I lay down the following as correct rules of construction with regard to contracts: All implied contracts (of which this is one) are to be construed according to equity and natural justice, taking into consideration all the circumstances connected with the transaction, or that thing which forms the consideration for making it. That each has a right to have it performed according to his reasonable expectation. That, in express contracts, where there is an alternative, or more than one mode of discharging them, the obligor has a right to select which of the modes he pleases; but when he has selected his mode, or made his choice, he is not at liberty afterwards to change it without the consent of the obliged. I further lay it down, as a fundamental principle with regard to trust and trustees, that the trustee can never be made accountable beyond the value of the trust estate, and that, where money is to be paid out of a certain or uncertain fund, you can never make the trustee or holder of the fund pay the money out of his own estate; and in no case can he be required to pay it until it becomes due. Here, then, it appears clearly, by the terms of the treaty, that the Government intended to reserve to itself the right to take into its own hands the fund out of which this money was to be paid, if circumstances would seem to warrant it—that is, if it should appear the lands were likely to turn out a productive fund, the object of the Government, no doubt, was to hold the land and pay the money immediately at the Treasury, or in such other manner as Congress might prescribe. Several reasons for such construction urge themselves upon the mind with great force.

It is said, by an honorable gentleman on the side of the question with myself, who is somewhat acquainted with its geography, that, although it is called "a land of flowers," it is, in fact, a land of sand-heaps, mosquitoes, frogs, serpents, and alligators. I know nothing of it myself, except what I have gathered from the general history of the country. But, I presume, its history or geography, at the time of the purchase, was very little known, which rendered its value very uncertain indeed; besides which, it may be recollected, that, by that same treaty, a part of that beautiful country, west and south of the Sabine River, and said to be more valuable than all the Floridas, was ceded to Spain as a part of the consideration for making the treaty—leaving it, indeed, very doubtful, whether all the lands ceded to the United States would be more than sufficient to the demands of those claimants. Again, it does appear evident, that something of this kind must have borne weight with the treaty-makers, as they have only undertaken by the treaty to secure to the claimants a sum of not more than five millions of dollars—leaving the balance, which is said, by some, to amount to more than ten millions, to future negotiation or total abandonment, guarding, very cautious-

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ly, all the time, against pledging the Government, in any shape, for more than five millions of dollars. And further, for the very purpose of meeting the contingent or uncertain value of the Florida lands, they introduced the optional provision in the treaty, before alluded to, which secures to the Government the right to keep those lands, should they be found valuable, as an indemnity for the cession of the lands beyond the Sabine; and at the same time to exclude the idea of a responsibility beyond the value of the Florida lands. The Floridas, while under the dominion of Spain, had already occasioned a hiatus in our sovereignty along the Gulf. To obtain possession of it, therefore, was considered a matter of great importance; and, no doubt, a sacrifice of a portion of land beyond the Sabine was made for the purpose of accomplishing an object of so much importance to the Government as that of securing the control of a maritime frontier, from the northern extremity of Maine to the mouth of the Sabine. I think, then, I am fairly warranted in saying, that, considering every circumstance connected with the transaction, the deranged and impoverished condition of Spain, the probability of her total incapacity to make any reparation for injuries done us, the peculiar situation of the Floridas in relation to the United States, and the necessity of taking them, or nothing, this country at the time, still bleeding with wounds inflicted by a recent war, the facility which its possession by a foreign power gave to drain the Southern country of its black population, the miserable imbecility and corruption of the Spanish authorities, calculated rather to favor than detect and punish piracies; besides the reflection that the sinuities and indentations of the coast, being eminently calculated to furnish a safe retreat in case of pursuit—hence, I say, under all these considerations, it was thought advisable to obtain the dominion and sovereignty of the country, if it could be had without actually paying money out of the Treasury—and hence, the sum stipulated to be paid the claimants was limited not to exceed five millions of dollars; and, at the same time, the payment confined to, and contingent upon, the value of the proceeds of the sales of the public lands in those territories. This accounts, too, for the peculiar phraseology of the treaty in stating, “The five millions to be paid by the creation of stock, bearing an interest of six per centum per annum, payable from the proceeds of the sales of the public lands, within the territories ceded.” If it were intended that the whole of these claims should have been paid, why limit them to five millions? or, if it were intended that even this sum should be positively and unconditionally paid, why introduce the above restrictive clause? Why, I say, make it payable by the creation of stock with interest payable from the proceeds of the sales of those lands? The reason, I think, is very obvious. It was never intended to pledge the Government be-

yond the value of those lands, and at the same time to make for the claimants the best possible bargain that could be, under these restrictive circumstances. I am here met by a position taken by some of the friends of this bill, that Government is bound, at all events, to pay the interest, annually, on the stock created, and that to issue it, redeemable only out of the proceeds of the sales of the lands in Florida, would be creating a stock, in its nature irredeemable, which is always unfavorable, say they, for the Government, as it goes to create a perpetuity, except at the caprice of the holder.

In reply to this proposition, I would remark, (and I think I am warranted by the rule of construction and the language of the instrument in making it,) that you cannot torture the words of the treaty, or so distort its meaning, as to draw from it such a conclusion. If the treaty-makers had intended that such construction should be given to it, why were they not explicit—why not put down the very words, *to be paid annually*? Why use the circumlocution they have, when they might have come to it at once? Why leave it in doubt, or to construction? I say they have placed it, in my mind, beyond all doubt, and I conceive, in the mind of the whole world, except by the most unnatural distortion of the fair import of the words. Why did they not say the claims should be paid by the creation of stock at six per centum per annum, if such was their intention? If such language had been used, and they had stopped there, there could have been no misunderstanding, even with the most illiterate; or had they said they should be paid at the Treasury without saying more, no men—not even the claimants themselves—could have pretended to misunderstand them. They might have been much more concise, and have only said, the United States shall satisfy the claimants to the amount of five millions of dollars; that would have ended the matter with the most skeptical mind, and Government would have been left to its discretion to pay it in any way satisfactory to the claimants. But they have gone on and said, “Those claims should be paid, not exceeding five millions of dollars, in the creation of stock, bearing an interest of six per centum per annum, payable from the proceeds of the sales of the lands in the territories ceded;” and the friends of the bill supply the words, *payable annually*, not out of the proceeds of the sales of the lands, but at the Treasury of the United States: for such is the effect of the construction for which they contend. Here principles for which I contended in the outset, apply. The Government becomes a trustee for the claimants; it has negotiated for them; has made the best bargain it could for them, without going into a doubtful contest with the sword. It has secured to them a fund of uncertain value, of which it is willing to give them the whole benefit, if it becomes necessary to the satisfaction of their



claims; reserving to itself, however, the right to the surplus, if any there be. I say that it is a fair presumption that it was the best bargain that could have been made for them with a bankrupt nation. The Government being the natural, or rather the legal guardian, of the claimants, it stands completely in the place of a trustee for them, and by no principle in equity can it be required to pay more than the value of the fund which it holds. Let it be however a good or bad bargain, it has been made by the treaty-making power of this country, a power over which this House has no immediate legal control. It is a contract completely binding upon this House, the nation, and the claimants themselves; and unless we mean to trample upon one of the constituted authorities of the country, and usurp a power never intended by the constitution to have been placed in our hands, we shall conform ourselves to the contract made by that power. It is the duty of the Government, as the guardian of these claimants' rights, to make the best of the funds placed in its hands for them; and if they can be paid their interest annually out of the proceeds of the sales of the lands, agreeably to the contract made for them, they ought to be paid; if not, they ought to be paid as speedily as possible, but without encroaching upon other funds of the Government. What will be the principle established by the passage of the bill upon your table? You not only set aside the solemn act of a co-ordinate authority, but, sir, you establish the principle, that, unless you can obtain complete pecuniary redress by treating with a nation, you must go to war. An honorable gentleman on my right tells you, that the Government has interfered between the claimants and the Spanish authorities; it has undertaken their cause, and prevented them from seeking redress in their own way against that power; and now, says the honorable gentleman, after interfering, and preventing them from making the best bargain they could, you are not willing to make them full reparation.

And, sir, what are you to get in lieu of your five millions of dollars? I will not say a land of mosquitoes, frogs, serpents, and alligators. I will suppose the best that can be said of it. You know not what you have got; you have got some wild lands in a country whose geography no man in this House can know with any certainty; you have relinquished the bird in the hand for the bare possibility of obtaining the one in the bush. You have indemnified a few insurance companies and underwriters, and have saddled the nation with a certain debt of five millions, and the interest until paid. By the bargain you drive, you violate one of the first rules of private economy, that is, "never to buy, at any price, an article you can neither use nor sell." Have you not already more public lands than you can dispose of to advantage? Are they not the greatest drug in the market? Have you not lands in nine different States and Territories? And, sir, will the Florida lands pay

the interest on the capital vested? They certainly will not. If indeed, you appropriate the proceeds of the sales of all the public lands in the United States, they will scarcely pay the debt and interest in ten years. If you make a calculation of the proceeds of the sales of the public lands in that State where the population is increasing more rapidly than in any other State in the Union, and at that period, too, when there were more lands sold, perhaps, than at any other—I mean the years 1820-'1-'2; upon such calculation, sir, it will be found that this debt and the interest can scarcely be paid in one hundred and fifty years. I have allusion to the State which I have the honor in part to represent. The sales of the public lands in that State, if I mistake not, averaged in the years 1820-'1-'2, three hundred and thirty-two thousand one hundred and sixty-five dollars. From this sum deduct the interest of the debt, which is three hundred thousand dollars, and we find a balance of \$32,165 to be applied annually to the extinguishment of the original debt. And, sir, can you hope that the lands in Florida will ever be as productive as the lands in Indiana? If so, it is a vain hope, which will never be realized.

One further view of this subject, and I have done. Gentlemen may endeavor to make themselves believe those calculations are fallacious, and my views visionary. I presume a fair method of calculating, and one that no honorable gentleman can object to, will be to compare the value of the two kinds of stock. What would be the difference in value of stock, payable from the proceeds of these lands, the value of which is totally unknown, and the value of that kind of stock proposed by this bill? The one directs you to the Treasury of the United States annually, for the sum of three hundred thousand dollars; the other leads you through this land of reptiles described by my friend from Virginia. I say, what is the fair value of each, and what the discrepancy? This tests the policy of the bill. I put it to every honorable gentleman in this House, what difference would you make in the price of the stock? Would you make 20 per cent.? If so, you are throwing away a million of dollars on the claimants. But, sir, I say there is forty per cent. difference; and, if so, you are throwing away two millions.

When Mr. Test had concluded—

Mr. RANDOLPH moved its recommitment to the Committee of Ways and Means, and supported the motion by a speech.

After some remarks from Mr. BARTLETT, the question was again taken on recommitting the bill, and decided in the negative.

The question was then taken on the passage of the bill, by yeas and nays.—For the bill 117, against it 66.

So the bill was passed, and sent to the Senate for concurrence.

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*Wabash and Miami Canal.*

[H. OF R.]

SATURDAY, May 8.

*Virginia Military Lands.*

On motion of Mr. VANCE, of Ohio, the House took up the bill "authorizing the President of the United States to enter into certain negotiations relative to lands located under Virginia military land warrants, lying between Ludlow's and Roberts' lines, in the State of Ohio."

[This bill provides, "That the President of the United States shall be, and he is hereby, authorized to ascertain the number of acres, and, by appraisement or otherwise, the value thereof, exclusive of improvements, of all such lands lying between Ludlow's and Roberts' lines, in the State of Ohio, as may, agreeable to the principles of a decision of the Supreme Court of the United States, in the case of Doddridge, lessee, against Thompson and Wright, be held by persons under Virginia military warrants, and on what terms the holders will relinquish the same to the United States; and that he report the facts at the commencement of the next session of Congress."]

Mr. P. P. BARBOUR, of Virginia, presented a memorial on the subject, which had been transmitted to him by an individual in the State of Ohio; which was read.

Mr. VANCE, of Ohio, stated the grounds of the bill, and the merits of the titles which are proposed to be quieted by it. He replied, also, to certain statements in the petition just read, which he considered not entirely accurate.

Mr. P. P. BARBOUR, with a view to cover as well the claims not located, as those which are, and which it appeared to him equally proper to provide for, moved to lay the bill on the table, to allow him time to prepare an amendment for that purpose.

Mr. VANCE said, that, however the description of claims referred to by Mr. BARBOUR might require future legislation, he did not think it ought to be connected with this bill, which embraced a distinct class of cases.

Mr. BARBOUR withdrew his motion with a view to introduce his proposition separately from it.

Mr. WICKLIFFE, of Kentucky, moved to amend the bill by adding to it a provision requiring a statement of the amount paid by the purchasers to the General Government for the land, and when paid, to be included in the communication to Congress.

After some observations from Mr. RANKIN and Mr. VANCE, this motion was withdrawn by the mover, under the impression that the information might be otherwise obtained.

Mr. McCoy, of Virginia, expressed his doubts of the expediency of legislating on this subject at all. When Congress did legislate on the subject, they ought, at least, to give the holders of military warrants the option of locating the warrants on other lands than those now open to them, &c.

Mr. McARTHUR, of Ohio, feeling himself interested in this bill, said he should decline voting upon it. He stated, however, some of his views

on the subject, one of which was, that the bill was one-sided, regarding the United States only, and could not prejudice any interest of the United States. He had hoped the claimants under Virginia would have been allowed a participation in the investigation proposed by this bill, but the committee, it seemed, had determined otherwise. Some of the statements in the petition which had been read, he pronounced to be false, and it had apparently been drawn up without any knowledge of the decision of the Supreme Court.

Mr. VANCE, of Ohio, further explained and defended the provisions of the bill, gave a history of the case embraced in it; and, on his motion, the report of the select committee in the case, was read.

The bill was then ordered to be engrossed for a third reading, without opposition.

*Wabash and Miami Canal.*

The House then resolved itself into a Committee of the Whole, (Mr. Ross in the chair,) on the bill to authorize the State of Indiana to open a canal through the public lands, to connect the navigation of the rivers Wabash and the Miami of the Lake.

Mr. CALL, Delegate from Florida, moved to amend the bill by striking out the words "ninety feet," proposed by the bill to be given for the location of the canal, and insert in lieu thereof a provision for giving the square of a mile on each side for the whole length of the canal.

In support of this motion, Mr. CALL delivered a speech of some length, which he commenced by replying to an anticipated objection on the score of precedent, by saying that a grant of land for a road was in principle the same as a grant for a canal, and a grant similar to this, for a road through a part of the State of Ohio towards Detroit, had been lately made. He then turned his attention to the importance of the canal proposed to be made, which, he said, would open a communication which would connect New Orleans with the Western Lakes, to the great facilitation of military operations for the purposes of defence, &c., not to speak of the facilitation of commerce. But this channel, however important, it would not be possible to open, for a long time at least, without the aid of a grant of the public lands, &c.

Mr. RANKIN, the Chairman of the Committee of Public Lands, stated the views of the committee on the subject. They duly appreciated the importance of such a canal, believing it to be the best point for the connection of these waters, but were restrained, by principles on which they had always acted, from going beyond the space necessary for a canal, and for assisting the collection of tolls thereon. If Congress intended to give a grant to this canal, or any other road or canal, it was much preferable that the grant should be in money, rather than in land. The road which has been spoken of, was claimed as a right, accruing under the

treaty of Brownstown, and could not be considered as a precedent for this measure. With regard to the expediency of granting aid to this measure, Mr. R. said, if it should be included in a general system of internal improvement, he should be in favor of it, but was opposed to acting upon it in the manner now proposed.

Mr. McLEAN, of Ohio, made a few remarks, expressive of the deep interest he felt on this subject, and of his conviction that the benefit to accrue from it to the United States, would doubly repay the whole expense of making the canal.

Mr. TAYLOR, of Indiana, explained the geographical character of the country through which the canal is to run. It was a measure so perfectly practicable, that he believed the deepest part of the canal from the surface, supposing the canal to be a dead level, would not be more than twenty-five feet. Its length would be only from fifteen to twenty miles. The country on both sides of the route was extremely rich, as rich, indeed, as it possibly could be, and capable of producing a vast amount of agricultural products. On the importance of this work to that country, and to the United States generally, he dwelt at some length, and then replied to the objections made by Mr. RANKIN, on the ground of the obligations of the compact with Virginia, and showed by computation that the proposed appropriation of land would advance the value of the public lands to a much greater amount than that of the proposed appropriation.

On motion of Mr. TRACY, of New York, the committee then rose, reported progress, and obtained leave to sit again.

MONDAY, May 10.

#### *Navigation of Western Rivers.*

On motion of Mr. BUCHANAN, of Pennsylvania, the House took up the bill "for the improvement of the Ohio and Mississippi Rivers."

Mr. BUCHANAN offered, as an amendment to the bill, the following:

"That the President of the United States be, and he is hereby, authorized to cause the navigation of the Ohio River to be improved over the following sand-bars, or either of them, at his discretion, to wit: the sand-bar which crosses said river one mile and a quarter below Flint Island; the sand-bar two miles above French Island; the bar just below Henderson; the bar below Straight Island; the bar below Willow Island, in the Mississippi bend; and the bar opposite to Lower Southerland, below Cumberland Island; and, for the purpose of ascertaining and directing the best method of carrying the provisions of this act into effect, he may employ any of the engineers in the public service which he may deem proper: *Provided, nevertheless,* That an experiment shall first be made upon one of the sand-bars, and if, in his judgment, it shall be successful, then, and not otherwise, he is hereby authorized to cause experiments to be made upon the remaining bars."

Mr. STEWART, of Pennsylvania, was opposed

to this amendment of the bill, as being calculated to embarrass it, and, in effect, to defeat it. He objected especially to the proviso, which requires a previous experiment before the appropriation is to be applied. The obstacles in the Western rivers are, he said, so various in their kind, that an experiment on one could not apply to the rest of them—and the President must depend on the opinions of others as to the success of the experiment when made, &c. He preferred direct legislation on the subject to any contingent provision. Mr. S. went on at considerable length to show the propriety of the amendment adopted in committee, making Brownsville the point of commencement where the proposed improvement met the national road, and rendered complete and entire the chain of communication between the East and West, &c., stating a variety of facts to show the great advantages to the West which would result from this measure.

Mr. HENRY, of Kentucky, replied, and advocated the amendment, on the ground that it was of paramount importance to obtain a recognition of the principle embraced in the bill, and that the particular modification of it was not of so great importance. For the sake of conciliating the opinions of all who were friendly to the principle of the bill, he was willing to yield his own opinion as to the details of it; and, with that view, he was in favor of the amendment.

Mr. MALLARY, of Vermont, moved to amend the proposed amendment so as to cause *two* experiments to be made instead of *one*, &c.

Mr. BUCHANAN rejoined—expressed his regret that the debate should be renewed—the committee's report was confined to certain bars in the river which were not of different kinds, but of one kind; and all he wished was, that a trial should be made on one of these before money should be expended on the rest.

Mr. TRIMBLE advocated the amendment. He was in favor of an experiment, and thought it ought first to be attempted on the lower part of the river.

Mr. McARTHUR was indifferent whether one or two experiments were made in the Mississippi, but advocated the propriety of extending the experiment to the Ohio River also, the obstructions in which were quite as dangerous to property as those in the Mississippi.

Mr. STEWART suggested to Mr. MALLARY to modify his motion, so as to require two "or more" experiments.

Mr. MALLARY did not accept of the suggestion.

Mr. KREMER advocated the amendment of Mr. BUCHANAN. He had had some experiments in attempts to remove sand-bars in the Susquehanna, the result of which had been very unfavorable. He therefore wished an experiment made on one of those in the Ohio.

Mr. HOGBOOM, of New York, took similar ground, and stated the difficulties which had been experienced in the Hudson, where vast

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sums had been thrown away in attempts to remove sand-bars, without any permanent benefit from the expenditure.

Mr. POINSETT, of South Carolina, suggested that there was a great difference between removing obstructions from sand in tide rivers and those where the stream always ran one way. In the former class of streams, the removal of one sand-bar was succeeded by the formation of others; but, in streams like the Mississippi and the upper part of the Ohio, where the water always ran in one direction, the case was very different.

The amendment of Mr. MALLARY, proposing two experiments, was agreed to—ayes 77, noes 71.

Mr. BUCHANAN's amendment, as thus amended, was then put, and carried.

The several other amendments, reported by the Committee of the Whole, were then agreed to.

Mr. McARTHUR then offered an amendment in the fourth section, to make its commencement read as follows: "And for the purpose of improving the navigation of the Mississippi River, from the mouth of the Missouri to New Orleans, and of the Ohio River, from Pittsburgh to its junction with the Mississippi," so as to include the Ohio River in the experiment.

The amendment was agreed to, and the bill, as amended, was ordered to be engrossed for a third reading to-morrow.

#### *Claim of Beaumarchais.*

On motion of Mr. TUCKER, of Virginia, the House agreed to take up the report of the committee on the claim of Beaumarchais. The motion was carried—ayes 81, noes 54.

The House went into Committee of the Whole, Mr. CAMPBELL of Ohio in the chair, on that report.

Mr. TUCKER, of Virginia, addressed the Chair as follows:

Mr. Chairman: It is well known to most of the committee, that Mr. Beaumarchais, in the first years of the Revolution, furnished clothing and military supplies to the United States to the amount of several millions of livres; that his account has been finally settled at the Treasury, and the whole amount paid, except one million of livres, which the accounting officers of that Department contend he received from his own Government, and was one of the nine millions which Louis XVI. gratuitously gave to the United States. It is admitted by the claimants that he did receive a million in behalf of the United States, but they say, and the agents of the French Government say, that it was given him to be expended in secret service money, and that he has satisfactorily accounted for the disbursement of it to his Government, to whom alone he was accountable. From this decision of the Treasury Department, an appeal is made to Congress.

Hitherto, Mr. Chairman, the merits of this claim have hinged upon the fact whether the million in question was received by Mr. Beau-

marchais, for the purchase of supplies, or not, and, as the arguments adduced on either side of the question are, in the absence of the highest evidence, derived from a great mass of circumstantial testimony, and are comprehended in long and numerous documents, I will beg leave to call the attention of the committee to the most important facts. Such a review will give the necessary information to those who have not found time to read the report, and refresh the memories of those who have.

Early in the year of 1776, Mr. Beaumarchais called on Mr. Arthur Lee, then an agent of the United States, in London, and informed him that the French Government were willing to furnish the United States with supplies to the amount of two hundred thousand louis d'or, which he proposed to transmit through the French West Indies, under color of a commercial transaction. Mr. Beaumarchais soon afterwards returned to Paris, and there made a more special and formal arrangement with Mr. Silas Deane, also an agent of the United States, for the transmission of these supplies; and to give it the appearance of a commercial adventure, and conceal it from the British Government, it was further agreed that tobacco, and other American products, should be remitted to Mr. Beaumarchais.

In pursuance of this arrangement, eight cargoes of military stores, clothing, and other merchandise, were shipped, by Mr. Beaumarchais, to the United States, in the years 1777 and 1778—and, during the same time, France furnished the American Commissioners, who were, at that time, Dr. Franklin, Mr. Lee, and Mr. Deane, with two millions of livres in cash, and they obtained a third from the Farmers General. During the shipment of these supplies, there seemed to have been great uncertainty, on the part of the Commissioners, about the source from whence they were derived. Mr. Lee, judging from what had passed between him and Mr. Beaumarchais, and from the subsequent assurances of the French Minister, always insisted that they were derived principally from the King—while Mr. Deane seemed to think that we were indebted for them solely to Mr. Beaumarchais. On a comparison, however, of their several letters, it is impossible to reconcile the statements of the different Commissioners with one another, or those of the same gentlemen, at different times.

In the year 1778, Mr. Deane was recalled, and Mr. Adams, late President of the United States, was sent to supply his place. In September of that year, the three Commissioners wrote to the Count de Vergennes, then Premier of France, stating their doubts about the source of these supplies, and requested to know of him what part of them had been furnished by Beaumarchais, and what part by the King—that both they and the people of the United States had always believed the greater part of these supplies had been furnished by His Majesty, and that they would discharge the obligation as soon

as Providence should put it in their power. To this application Mr. de Vergennes answers, that the King had furnished nothing—that he had permitted Mr. Beaumarchais to furnish himself from his arsenals, on condition of replacing the articles, and that he would, as to these articles, interpose to prevent the United States from being pressed for immediate payment. This correspondence was transmitted to America, and in the following year, Congress directed their President, Mr. Jay, to write to Mr. Beaumarchais, acknowledging the debt and promising payment. From that day to this, he has stood upon the books of the Treasury as a creditor for the whole amount of these supplies, and payments were made him from time to time. Besides the remittances in tobacco, and other domestic products, equal to about 10 per cent. of the value of the supplies, bills were drawn in his favor, on our Commissioners in France, for between two and three millions of livres, payable in one, two, and three years.

In the year 1782, Mr. Deane returned to France, and made a settlement with Mr. Beaumarchais, by which the balance due to him was about nine hundred thousand dollars. This settlement, however, was not ratified by Congress, because it was said Mr. Deane had no authority to make one; and because, I presume, Congress did not approve it. But in 1784, Mr. Barclay, who was appointed our Consul General to France, was vested with authority to make a settlement with Mr. Beaumarchais, subject to the ratification of Congress. He accordingly made one, differing not materially from the settlement since made at the Treasury, but it did not receive the confirmation of Congress. Probably this settlement would have been ratified, if a circumstance had not come to light, which is a curious one, as well in the history of diplomacy, as in the life of that distinguished man, Dr. Franklin. In the year 1786, on a settlement of the account of Mr. Grand, our banker in Paris, it was discovered that he had given credit but for eight millions received from the French Government by way of gratuity, instead of nine, which, in a treaty dated three years before, Dr. Franklin had acknowledged to have received. Dr. Franklin, on being informed of the variance, applied to Mr. Grand for an explanation, who, in turn, applied to the Count de Vergennes, but he refused to state to whom the million in question was paid; and that, as it was paid out of the Royal Treasury on the 10th June, 1776, (which was before Dr. Franklin arrived in France, and before Mr. Grand became the American banker,) a copy of the receipt for this million could not be necessary for their exoneration. It was then conjectured by Dr. Franklin that Mr. Beaumarchais had received this million. In 1788, a committee of three members of Congress (of which Mr. Arthur Lee was the chairman) had the subject of Mr. Beaumarchais' accounts referred to them for settlement; and, in their report, by not allowing many of his claims for

commission, insurance, and other charges, and charging him with some supposed losses,—they made him a debtor to the United States to a large amount.

After the adoption of the new constitution, Mr. Beaumarchais, complaining of the injustice that has been done him, renewed his application to the Government; and, in 1798 a settlement of his accounts was made by the Auditor, under the superintendence of Mr. Hamilton, on more liberal, and it appears to me more correct principles, by which a balance was found due to him of upwards of two millions of livres. But the report recommends that payment should be suspended until some further explanation should be given of the "lost million," as it was often called. But, in the following year, Mr. Gouverneur Morris, as Minister from this country to France, applied to the Minister for Foreign Affairs for information relative to the million that remained unaccounted for, and, by a well-timed compliment, succeeded in obtaining the receipt for this million advanced in June, 1776, by which it appeared to have been paid to Mr. Beaumarchais.

In the following year, Mr. Beaumarchais wrote a long and eloquent memorial on the subject of his claim, in which he insisted that he had rendered an account to his own Government of the money he had received from it. But the coincidence of sums and dates furnished such strong circumstantial evidence against him, that he was held chargeable at the Treasury for the million he had received in June, 1776. After his death, (which took place about 1799,) the claim was renewed, in behalf of his representatives, in 1802, by Mr. Petion, the Chargé d'Affaires from France; and in 1805, by Mr. Turreau, the Minister Plenipotentiary, who then stated, for the first time, that, on an examination of the archives of his Government, it had been discovered that the million received by Mr. Beaumarchais in June, 1776, had been paid him for a secret political service. On the last application, the subject was referred to a committee of this House, who, after charging Mr. Beaumarchais with the million in question, reported a balance of about forty-one thousand dollars, which was paid him, with interest. In the succeeding year, Mr. Turreau again pressed the claim on the notice of the Government, and stated that the million had been paid for a secret political service, but not for the purchase of supplies. The subject was not then acted on by the House. Since that time it has been repeatedly brought before Congress, and from first to last the memorial of the present claimants has been referred to six different committees, exclusive of that of the present year—three of whom reported in favor of the claim, and three against it.

On the question whether Mr. Beaumarchais received the million, of June, 1776, for the purchase of supplies, or not, (the point on which the committee chiefly differed, there is much circumstantial evidence on both sides. The fol-

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lowing facts are unfavorable to the supposition that the supplies were purchased from his own funds: The mediocrity of his fortune; many of the articles furnished were drawn from the King's arsenals; the repeated declarations of the French Minister to our Commissioners; the letter of the Minister to the King, in May, 1776, in which he speaks of advancing a million for the use of "the colonies;" the letter from the King of France to the King of Spain, in which he says he has furnished money and other succors, ostensibly on the score of trade; and, lastly, the letter of Mr. Beaumarchais himself, of December, 1776, wherein he states his advances to have been about one million of livres.

But, on the other hand, there is the solemn declaration of Mr. de Vergennes that the King had furnished nothing. He certainly was not warranted in saying the King had furnished no supplies, if he had furnished money to purchase supplies. But, again: there can be no doubt but Mr. Beaumarchais must have been held accountable to his Government for this million, for whatever purpose it was put into his hands. But if it was intended as *douceurs* for persons about the Court, or to procure intelligence, or to bribe foreign agents, or for any of those purposes for which secret service money is usually employed, it is said, and it seems not improbable, that the vouchers in such cases are destroyed. The evidences of such details they might wish to withhold, not only from the world, but from their successors. But there could be no reason to destroy the vouchers, if they related merely to the purchase of supplies. The absence, then, of all vouchers of the particulars of disbursement, affords some evidence that the money was expended for one purpose and not for the other.

On weighing this conflicting evidence, I am free to admit, Mr. Chairman, that there is a preponderance of testimony that Mr. Beaumarchais received the million in dispute, for the purchase of supplies; and, if France had been passive on the occasion, or, if we had paid any valuable consideration to her for this million, I should think we were justified in charging Mr. Beaumarchais with that amount. But, when it is recollected that we received these supplies immediately from Mr. Beaumarchais, have settled the account upon our own terms, that the million which we claim as a credit was paid, not by us, but by France, as an act of bounty, and that the French Government insists that this bounty was used for another purpose—when these things are recollected, it does seem to me, that we are precluded from entering into a contest with France on this subject; or, in other words, that we cannot, consistently with our honor or self-respect, pay off an undisputed debt, with a doubtful and disputed gift. On this occasion, Mr. Chairman, I cannot recognize one rule of morality for the nation, and another for individuals. I would pursue the same course in public as in private life; and, as an individual, I never could seek to give the bounty of a benefactor a direction which he objected to, for

the purpose of making a discount to the acknowledged debt of a third person. Sir, in this case, France is right, or she is not. If she is right, that the million was furnished to Beaumarchais for secret service money, then we have no pretext for refusing to pay him the balance of his account; but, if she is wrong, then the error consists in claiming our gratitude for nine millions when she has given us but eight, which can in no manner affect the account of Beaumarchais.

The whole of the present difficulty has grown out of the mistake of Dr. Franklin, in the treaty of February, 1788. When he signed that treaty, suppose he had been aware that but eight millions of livres had actually been received, and that he had said to the Count de Vergennes: "You call on me to acknowledge the receipt of nine millions, as the gift of your Government, while I know only of eight; show me how the other million was used for our benefit, and I will freely acknowledge that too;" if, in answer to this, the Count de Vergennes had said, what his successors have said, that the million was used for a "secret political service," can it be believed that Dr. Franklin would have hesitated to receive the assurance, and to sign the treaty which he actually did sign? If he would not, there would have been no ground for the present dispute. But, let us suppose that he would not have been content with the simple assurance of the French Minister, then either that Minister must have given him satisfactory evidence concerning the disposition of the doubtful million, or he would have acknowledged only eight millions, in either of which cases Mr. Beaumarchais's claim is indisputable. Assuredly, if our agent had signed a treaty under a mistake, as he himself states, that mistake should be rectified with the French Government, which should either give us a satisfactory explanation, or hold us bound in gratitude but for eight millions, neither of which can affect the claim of Beaumarchais.

Mr. Chairman, we ought to be consistent with ourselves, with regard to the declarations of the French Government. When Monsieur de Vergennes declared to our Commissioners, in September, 1778, that the military supplies were furnished solely by Mr. Beaumarchais, we acquiesced in that assurance, and required no further proof. Again: Mr. Gallatin, in his late correspondence with the Duke de Richelieu, Minister of Foreign Affairs in France, stated, that if the French Government would make an explicit negative declaration, that the million paid to Mr. Beaumarchais, in June, 1776, was not applied to the purchase of supplies, the difficulty with the accounting officers of the Treasury would have been removed. And, although the answer of the Duke de Richelieu may be considered as somewhat equivocal, yet that which Mr. Turreau had made in 1807, was as positive and explicit as it could be. Had this declaration been made the year before, it would seem, from Mr. Gallatin's letter, the

million would not have been deducted from Beaumarchais's account; and, it having been made since, the same consequence should follow. On every ground, then, Mr. Chairman, I am free to say I would vote at once for an appropriation to the whole amount of this claim, whatever may be my private opinion of the source whence Mr. Beaumarchais derived the million; it being certain that he did not derive it from us, and that we have used the supplies which it purchased. But, as our citizens have claims against France for spoliations on their commerce to a large amount, (probably twenty times as much as this claim,) and the French Government has itself introduced Mr. Beaumarchais's claim into the negotiation, I think we may adjust the whole together, without any dereliction of national justice or honor, and I therefore hope the committee will adopt the resolution for that purpose offered by the committee.

When Mr. TUCKER had concluded—

Mr. DWIGHT called for the reading of the report of the committee of this House in 1814, (and of which committee Mr. LOWMEYER was chairman,) unfavorable to the claim.

Mr. FARRELLY called for the reading of the opinion of the Attorney-General, Mr. Rodney, in 1807.

Mr. CLAY, in a short speech, expressed a very decided opinion in favor of the claim.

Mr. LIVERMORE took the opposite side, and delivered a few observations in opposition to an allowance of the claim.

Mr. DWIGHT then rose, and went at great length into the whole subject, in reply to Mr. TUCKER and Mr. CLAY, quoting a number of documents in support of his statements, and concluded his speech with offering a resolution that the petitioner have leave to withdraw her petition.

Mr. FARRELLY followed in reply, and spoke at considerable length, to show that the demand was just, and ought to be allowed.

Mr. CAMBRELENG rose in opposition to the claim, quoted declarations of the Count de Vergennes, remarked on the opinion of Mr. Pinkney, and adduced general arguments against allowing any part of the demand.

Mr. LIVINGSTON, of Louisiana, rose, and, expressing a desire to deliver his sentiments, which were most decidedly in favor of the claim, moved that the committee rise.

The committee rose accordingly, and had leave to sit again.

TUESDAY, May 11.

#### *Navigation of Western Rivers.*

The engrossed bill making an appropriation for improving the navigation of the Ohio and Mississippi Rivers, was read a third time.

Mr. WILLIAMS, of New York, demanded the yeas and nays on the question of its passage; and they stood, yeas 155, nays 60.

So the bill was passed and sent to the Senate for concurrence.

#### *Claim of Beaumarchais.*

The House then went into Committee of the Whole, (Mr. CAMPBELL, of Ohio, in the chair,) on the unfinished business of yesterday, which was the report of the committee to whom was referred the claim of the representatives of M. de Beaumarchais.

Mr. LIVINGSTON, of Louisiana, who was by custom entitled to the floor, having yesterday moved for the committee's rising, then rose, and delivered, at great length, his views in favor of the claim.

Mr. RANDOLPH, of Virginia, delivered his views in opposition to the claim; and concluded his speech, by moving that the committee rise, report progress, and ask leave to sit again, with a view that leave be refused.

The question on the committee's rising, being then taken, was decided in the affirmative—yeas 105, noes 40.

The question, on granting leave to sit again, was decided in the negative—yeas 60, noes 91.

On motion of Mr. RANDOLPH, the report of the committee was then ordered to lie on the table.

#### *Canal in Indiana.*

The House went into Committee of the Whole, (Mr. MARVIN in the chair,) on the bill "authorizing the construction of a canal through the public lands, in the State of Indiana, between the Wabash and Miami of Lake Erie."

The question recurring, from Saturday, on Mr. CALL's motion to strike out "ninety feet," and insert "one mile," for the extent of the reservation on each side of the canal—

Mr. ALEXANDER, of Virginia, objected to the amendment, as trenching on the terms of the cession of the Northwestern Territory by Virginia to the United States, which declare that the whole of that cession shall be a fund for the payment of the common expenditures of the United States.

Mr. RANKIN took the same ground; the proposed canal was a local work, and not one of the "common expenditures" of the U. States, and thought it was better to give money than land in aid of it.

Mr. TEST contended, that giving a mile on each side of the canal did not violate the terms of the cession more than 90 feet—it was in the spirit of that cession, because it enhanced the value of all the rest of the lands ceded. Unless this land was given, Indiana would be unable to effect the object. This was the only opportunity, at once, of giving timely aid to the canal, and of enhancing the value of the public lands.

Mr. STEWART, of Pennsylvania, denied that this canal was a local measure, and he stated its effects on the Union at large. He advocated the amendment—and read an extract from the writings of Mr. Fulton on the benefits of canals. He replied, also, to the objections of Mr. ALEXANDER, &c.

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*Public Lots in Washington.*

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Mr. BROWN, of Pennsylvania, thought that, if the canal would so greatly enhance the value of the public lands, it would be better for the United States to make the canal than to give all the benefit of the work to Indiana. The calculation was, that the canal would cost only \$300,000, and they asked land to the value of \$500,000. He for one would never consent to give it.

Mr. CALL, Delegate from Florida, spoke in reply, and urged the present low value of the public lands in that quarter as an argument in favor of the bill. All that was proposed to be given would, at present value, amount only to \$35,000. The additional value would arise from the enterprise and industry of the State of Indiana. He replied to the arguments of Mr. ALEXANDER, and dwelt at some extent on the value of this line of water communication, and the facility of making the canal.

Mr. SHARPE, of New York, thought the only question was, whether this was the proper time to engage in the undertaking. He wished farther information on this point, and expressed some apprehensions of the danger of the precedent.

Mr. RANKIN replied, and explained the facts of the case, and repeated and confirmed the arguments he had before urged.

Mr. JENNINGS called for the reading of the memorial of the Legislature of Indiana on this subject. It was read accordingly.

Mr. JENNINGS stated the topography of the country through which it was proposed to cut this canal. He adverted to the opinion of General WASHINGTON, in favor of this and other Western communications. He went at considerable length into a discussion of the objections from the terms of the Virginia cession, and of the practicability and general importance of the measure.

Mr. TIER followed in farther explanation of the bill and the amendment.

Mr. MCCOY delivered at some length his objections to the amendment, as granting to one State what was intended only for general objects. He urged the danger of the precedent, the difficulty with which Virginia could get enough land to pay her Revolutionary soldiers, &c.

Mr. SHARPE thought the grant in the amendment very large, and the time for completing the work too great. This measure would be superseded, moreover, by the general plan for internal improvements. He thought it was enough, at present, to provide for surveys, as had been already done.

The question on the amendment moved by Mr. CALL, for giving a mile on each side the canal, being then taken, was decided in the negative.

#### *Canal in the Territory of Florida.*

The committee then took up a bill to authorize the Territory of Florida to open a canal through the public lands; and, having gone

through it, reported the latter bill, which was ordered to a third reading, and asked and obtained leave to sit again on the former.

And then the House adjourned.

WEDNESDAY, May 12.

#### *Inland Trade between Missouri and New Mexico.*

Mr. SCOTT laid the following resolution on the table, for consideration to-morrow, viz:

*Resolved*, That the President of the United States be requested to communicate to this House any information which he may possess, in relation to the intercourse and trade now carried on between the people of the United States (and particularly the people of the State of Missouri) and the Mexican provinces; how, and by what route that trade or intercourse is carried on; in what it consists; the distances, &c.; the nations of Indians through which it passes; their dispositions, whether pacific or otherwise; the advantages resulting, or likely to result, from that trade or intercourse.

#### *Indiana Canal.*

The House went into Committee of the Whole, (Mr. CAMPBELL, of Ohio, in the chair,) on the bill to authorize the State of Indiana to open a canal through the public lands; and the question recurring from yesterday on the amendment granting ninety feet of land on each side of the proposed canal, it was agreed to.

The blank in the second section was so amended, as to require the survey to be finished within *three*, and the canal to be finished within *twelve* years.

THURSDAY, May 13.

#### *Public Lots in Washington.*

The following report was yesterday made by Mr. BRENT, of Louisiana:

The committee appointed by virtue of a resolution of the House of Representatives, of the 4th day of March, 1824, have had the subject which that resolution proposes under consideration, and submit the following report, viz: A letter from J. Elgar, Commissioner of the Public Buildings, dated 5th of May, 1824, by which it appears that the gross amount of the sales of the public lots, in Washington city, as made by the Commissioners and Superintendent, was six hundred and eighty-nine thousand four hundred and forty dollars, eleven cents, subject to a deduction for losses, occasioned by failures of purchasers, the amount of which has not been ascertained. The committee have not been able to obtain information from the books of the Commissioner of the Public Buildings, of the number of public lots sold, when sold, by whom, to whom, and for what price each lot; what part of the purchase money has been paid, and the exact balance due. To obtain this information, would require more time than probably remains of the present session of Congress, as the Commissioner of the Public Buildings states that it could not be done in less than two months.

As to the disbursements which were made by the late Samuel Lane, Commissioner of the Public Buildings, the committee find that a balance of \$22,961 77 was due by the late Samuel Lane, Com-



missioner of the Public Buildings, at the time of his death, together with the balance of \$1,740 14, which he had received on account of the sales of city lots; and that, since his death, his estate has received credit for different sums of money amounting to \$9,075 08, which leaves a balance due the United States of \$15,590 85; that his executor has not yet completed the settlement of his estate; and, therefore, it is impossible for the committee to say how much of that balance will eventually be refunded to the United States. It is probable the balance will be somewhat diminished, but that a large sum will remain unpaid.

The committee, therefore, submit the following resolution:

*Resolved*, That the President of the United States be requested to cause to be made, and submitted to this House, upon the first day of the next session of Congress, a full and complete statement of the exact number of lots belonging to the United States, in the city of Washington, which have been sold by the public agents for that purpose, when sold, by whom, to whom, and for what price each lot was purchased; what part of the purchase money has been paid, the amount due, and by whom due, and when payable; whether the debts are well secured, and whether the money received has been applied; to what purposes, and by whom.

*Occupying Claimant Laws, &c.*

The resolutions some time since offered by Mr. LETCHER (in relation to decisions by the Supreme Court of the United States) were taken up—ayes 80, noes 48.

The House accordingly went into Committee of the Whole on the state of the Union on those resolutions, which are as follows:

*“Resolved*, That provision ought to be made by law, requiring, in any cause decided in the Supreme Court, in which shall be drawn in question the validity of any part of the constitution of a State, or of any act passed by the Legislature of a State, that — justices shall concur in pronouncing such part of the said constitution or act to be invalid; and that without the concurrence of that number of said justices the part of the constitution or act of the Legislature (as the case may be) so drawn in question, shall not be deemed or holden invalid.

*“Resolved*, That the justices aforesaid, in pronouncing their judgment in any such cause, as aforesaid, ought to be required by law to give their opinions, with their respective reasons therefor, separately and distinctly, if the judgment of the court be against the validity of the part of the constitution or act drawn in question, as aforesaid.

*“Resolved*, That the Committee on the Judiciary be instructed to report a bill, in conformity to the preceding resolutions.”

Mr. WEBSTER moved to amend the first resolution by striking out all after the word *Resolved*, and inserting—

“That provision ought to be made by law that in all suits now pending, or which may hereafter be pending, in the Supreme Court of the United States, where is drawn in question the validity of any treaty or statute of the United States, or where is drawn in question the validity of any statute of a State, or the constitution thereof, or of any authority exercised under any State, on the ground of re-

pugnancy to the constitution, treaties, or laws, of the United States,—no judgment shall be pronounced or rendered until a majority of all the justices of said court, legally competent to sit in the cause, shall concur in the opinion either in favor of or against the validity thereof; and, until such concurrence, such suit shall be continued under advisement: *Provided, however*, That said court should not, by such provision, be prevented from rendering judgment in any such suit, when it should be of opinion that the final adjudication of the merits thereof did not require the decision of such continuance or legal question as aforesaid.”

The Chair decided this amendment to be out of order, as there was another amendment pending.

Mr. FORSYTH, who had offered this amendment, withdrew it, to allow discussion on that presented by the gentleman from Massachusetts.

Mr. CLAY spoke in opposition to the amendment, and in defence of the resolution as offered by Mr. LETCHER. He objected to that part of the amendment which prescribes that a majority of the judges, “competent” to decide, shall be required—there being no umpire to decide upon their competency; and if two declined, a majority will be only three judges. He thought that when four judges should be found on one side and three on the other, the united decisions of the State Legislature and State Judiciary, together with the three Supreme Court judges, would outweigh the judgment of the remaining four. He insisted on the equity and policy of requiring five judges to concur when the whole authority of one or of many States was to be set aside. He adduced the case of the bankrupt laws, passed by a majority of all the States, as an illustration of the position. He thought that no danger could arise from such an arrangement to the interest of the General Government. It would soothe the States whose laws were set aside, and conciliate the confidence of all parties concerned.

Mr. P. P. BARBOUR met the objection made to the resolution of Mr. LETCHER, that, if it prevailed, a minority might control a majority, by refusing to concur in their decision. This, he said, was no more, but much less, than happened every day in the case of an ordinary jury, where one man's refusal controlled the decision of eleven men.

Mr. WEBSTER spoke in reply, and stated a difference in these two cases, since, in the one, a minority did virtually give a decision, (because the court must decide, one way or the other,) whereas, in the other, the refusal prevented a verdict, and no decision was given on either side. He went into the general principles on which the Supreme Court was erected, by the constitution, as a safeguard to the General Government against the State governments, when disposed to violate the constitution. He maintained that no greater number should be required when a State was a party, than when an individual, claiming under a

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Supreme Court.

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State law, was a party—because the authority of the State was involved in its laws. He stated the improbability that all the seven judges should, in each case, attend; and, if one judge should be involved in the question, five only would be left. If this resolution passed, not even four out of these five, could decide. He referred to the late case of the steamboat monopoly. In that case one judge was absent, and if it had happened, as it might, that another was indisposed, or interested in the question, so as to leave a court of five judges only, four out of the five would not have been competent to pronounce a decision, if the provision of Mr. LETCHER's resolution had been law. It was a fair presumption, that State judges would lean toward the authority of their own State. A mere majority of those judges could decide against the United States, but now, more than a majority was to be required to decide against a State. This was unequal. The very case of the bankrupt laws, quoted by gentlemen, furnished a strong instance. He protested against a greater number being required to decide a cause one way than the other. He passed a eulogy on the Supreme Court as a tribunal. Its whole weight with the community rested on the strength of the reasons it brought for its decisions. He adverted to the encomium pronounced on a great judge in New York, (Chancellor Kent,) and subscribed to it with the most entire assent, and he quoted from an introductory lecture lately delivered by that jurist, a very decided testimony to the distinguished character of the Supreme Court.

Mr. CLAY replied—and while he subscribed to a very high opinion of the Supreme Court, he could not acknowledge that the moment a man was appointed a member of that court, he became exalted above his whole species in intellect and virtue. He spoke of their power practically to make the constitution, by giving, authoritatively, their interpretation of it. He warned the country of the consolidating influence of this power, and maintained the necessity of guarding the State tribunals. The Supreme Court was virtually an umpire between the General Government and the States—its appointment was by one of these two parties, and its bias might be expected to be towards that party on which every member of the tribunal was dependent.

On the subject of the attendance of judges, he had attended sixteen or seventeen terms, and had never witnessed more than two, at the most three, where a full court was not present. In the steamboat case, he asked whether, had four Supreme Court judges decided against three, the opinion of the Supreme Court of New York; of Judge Kent, (than whom there was not more, at the utmost, than one greater jurist on the bench of the Supreme Court,) and of the Court of Errors of that State, added to the opinion of three judges of the Supreme Court, ought not to outweigh the opinions of four Supreme Court judges.

In reference to the argument respecting a jury, he observed, that the want of a verdict, when all did not agree, was not owing to the mere declaration of law, but to the reason of the case, on which the law was founded. He viewed the amendment of the gentleman from Massachusetts as worse than nothing in the case, and he concluded by expressing an earnest hope that it would not be adopted.

The debate was farther continued by Mr. BUCKNER, who spoke in opposition to the amendment; when, on motion of Mr. METCALFE, the committee rose and had leave to sit again.

MONDAY, May 17.

*Beaumarchais Claim—Motion to Consider it in the Negotiations between France and the United States.*

Mr. TUCKER, of Virginia, moved the following resolution, which he supported by a short speech:

*"Resolved, That the petition of Eugenie Amelie Beaumarchais de la Rue, be referred to the President of the United States; that he be requested to cause the same to be considered in the pending negotiations with the French Government, relating to the claims of American citizens, for property illegally seized and confiscated; and if found to be just, then, and in that case, to be allowed in the final adjustment of the aforesaid claims."*

The House refused now to consider this resolution by a small majority.

Supreme Court.

Mr. WEBSTER, from the Committee on the Judiciary, reported a bill to alter the time of holding the sessions of the Supreme Court.

Mr. METCALFE offered the following amendment to the bill:

*"Be it further enacted, That, in any case now or hereafter depending in the Supreme Court, in which shall be drawn into question the validity of any part of the constitution of a State, or of any part of an act passed by the Legislature of a State, unless two-thirds of the whole number of justices composing the said court shall concur in pronouncing such part of the said constitution or act to be invalid, it shall not be held or deemed invalid."*

Mr. METCALFE, of Kentucky, addressed the Chair as follows:

Mr. Speaker—It is an indispensable duty, which I owe not only to the Legislature of Kentucky, but particularly to those whom I have the honor immediately to represent, that I should, on the present occasion, exercise one of the privileges properly pertaining to the Representatives of a free people—a privilege which I but seldom claim, but which, I am persuaded, will be liberally and generously accorded to me, provided I do not abuse it, by the enlightened patriotism and magnanimity of the body over whose deliberations you preside.

In looking around me, however, I behold an

audience composed, not only of the most distinguished statesmen, but mainly of the brightest luminaries of the law in this Union; and reflecting that this is a question peculiarly suited to the investigation and discussion of lawyers, and that I am not a member of that respectable profession, it would require more hardihood than I possess to shield me entirely from feelings of embarrassment—feelings which, I presume, do not result from any unusual timidity of character; nor am I willing to admit that those feelings proceed from any indisposition on my part to express my sentiments here, or elsewhere, either upon this, or upon any other subject, but more especially upon a subject of such vital importance, and so deeply interesting to those from whom I derive my power, and whose agent I am. But I cannot help perceiving that I am liable to be taken in the net of legal technicality, at least. Besides, I am conscious of the magnitude of this question—of the anxious solicitude with which my countrymen look forward to the decision which may ultimately be had upon it—of the want of time in this body to investigate it fully during the present session, and my own want of preparation, or learning, or capacity, to do it any sort of justice. A knowledge of one truth, however, affords me some consolation. In the eyes of wise and honorable men, even the rude, uncultivated man, in his efforts to do good, in whatever light the strength of those efforts may be viewed, will always find some favor. And in this question, Mr. Speaker, said Mr. M., the interest of the most humble, as well as the most exalted, of our citizens, is deeply, very deeply involved. Indeed, it must be conceded that, in such a question, the most humble are the most interested—it being a maxim, admitted by all, denied by none, that the further you remove power from the people, the further you put their rulers out of their reach, or beyond their control, the greater will be the oppression of the industrious and productive classes of the community, the more abject and miserable will be the condition of the unlearned, the ignorant, and the poor.

I unhesitatingly give it as my opinion that a poor man, for an inconsiderable sum, ought not to be subject to a suit in the Federal court. In matters of contract and dealing between man and man, if no difference is made, or attempted to be made, between resident and non-resident citizens; if no obstacle is thrown, or attempted to be thrown, in the way of the latter, which does not equally apply to the former, either as it respects the process by, or the principle upon, which their respective rights are to be decided, the enactments and adjudications of the States ought to be final—if you please, the supreme law of the land. Cite a poor man, or a man who, in point of wealth, is not above mediocrity, especially if he is not very dextrous and crafty in the management of lawsuits, to appear himself, or by counsel, hundreds and thousands of miles from home, for the purpose of trying

his title to the little all he possesses, and he has but little prospect of success; besides, it is not very material whether he gains or loses his cause—the process by which he arrives at a decision, robs him of all he is worth, and leaves him in penny, want, and misery. Such laws are not only exceedingly vexatious, but a departure from the benign and salutary principle of administering justice as near to every man's door as practicable. And is it not doubly vexatious, unequal and partial in its operation, to allow a non-resident to institute his suit in the State courts, thereby apparently waiving his right to use the Federal courts; and, after harassing the resident for many years, and subjecting him to much cost and trouble, before the former tribunals, then to allow the said non-resident, by appeal, writ of error, or some other process, to revive the suit which he had lost before the tribunals of his own selection in the Federal courts? Do you call this justice, or sound policy?

A distinguished poet has said: "He that thinks must govern him that toils." A doctrine which I shall not attempt to controvert. But, said Mr. M., if the thinking few who rule are not to be responsible to the toiling million, for their conduct, it requires no great share of penetration, or of experience, to satisfy the mind that the latter will, sooner or later, become the slaves of the former, and all the labor of their hands, over and above what their absolute necessities require, will go to enrich and pamper their thinking masters.

If, said Mr. M., I may be permitted to use the appropriate, elegant, and I will venture to say, among philanthropists and lovers of human equality, the never-to-be-forgotten figure of the honorable member from Massachusetts, (Mr. WEBSTER,) I will say, that, if you divide society horizontally, placing the thinking few, who rule, above, and the toiling million below, the prediction which I have just now uttered will soon come to pass. In behalf of that toiling million who are now struggling and groaning beneath the weight of that horizontal partition—an intolerable load—allow one of themselves, who never expects or desires to be placed upon the upper side of it, for a short time, the kind indulgence of the House.

We have the happiness, it is true, to live under a Government, the model of which is not to be found; and it is in vain to search for its likeness, either in ancient or modern history—a Government which may be considered as the offspring of a union of many Governments, and, in its turn, the prolific parent of many more, all of which are united and uniting in one, with continual increase of numbers—a splendid system, in which the divisions of power are vastly numerous, but extremely complicated, requiring the keenest intellectual perception, the most discriminating powers of mind, with much learning, experience, and soundness of judgment, to enable us to assign to the different Governments, and their various

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*Supreme Court.*

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departments, their due portions respectively, and proper limitations of power.

If any one of these departments, or of the different functionaries, shall attempt by virtue of the soft and easy process of construction, to gain an accession of power, not fairly delegated or authorized by the constitution; and thereby to prevent a co-ordinate, or any other branch of the Government, from exercising the power and discharging the duty which properly pertains thereunto, it certainly becomes us to impose some restraint upon the usurping department.

If, in reality, there exists a disposition on the part of this court to encroach upon the authorities of the United States, as is believed to be the case by many of the most patriotic and wise republican statesmen in the Union, will not the proposition which is now under consideration, if adopted, have a tendency to check that disposition, or to render the effects of it less frequent and common than under the present arrangement? That it will have such a tendency, must be admitted. But, on the other hand, if the fears and apprehensions of those who look upon the court with an eye of jealousy, are unfounded and unreasonable, the tendency of this amendment will be to remove that jealousy, to reconcile discordant departments, and to give more satisfaction and peace to society.

Of late, we have the mortification very frequently to hear of conflicting claims of power, between the Federal and State governments, between the various departments of the several governments, and more especially between the Federal judiciary and the States.

How are we to check the growing evil? Will the proposition which is now under consideration do it? For my own part, said Mr. M., I answer with trembling uncertainty—for it is not exactly the plan which, above all others, I would prefer—in the affirmative. It would most certainly diminish the chances, and lessen the probability of encroachment. In cases wherein the validity of State laws are brought into question, and laws, too, which have received the sanction of the State courts, so large a majority of this body of magistracy will seldom if ever concur in giving an opinion against such enactments and decisions, unless they are clearly and manifestly unconstitutional; a thing which it is believed will but seldom occur; and when it does, the opinion of the court will be so well supported by argument so strong and conclusive as to carry conviction wherever it goes—and thus, by reconciling all parties, the court will regain its popularity and high standing among the citizens of this republic—the Federal and State governments, and their different departments, will then move on harmoniously, while the people are contented, prosperous, and happy.

If the eye of the patriot is turned to the present condition of things in this country, what a singular and disheartening spectacle does he behold! By some, it is insisted that the Federal

Government is aiming at consolidation. By others, and myself among the number, it is believed that the Federal Judiciary is aiming, by virtue of the spherical sovereignty which it claims for itself, at the supreme control of the State governments; and assuming to itself political, as well as judicial power.

On the other hand, it is insisted that the State governments are in the habit of reeling from their proper orbits, of impinging upon the Federal authorities, and thereby creating great confusion and disorder. And it is probably true that none of those governments, and that no one of the different departments, do in every instance confine themselves as strictly as they ought to do, within their respective constitutional limits; and, at other times, by failing or refusing to fill up the whole space allotted to them, as much injury is produced as by transcending their respective limits. Indeed, I presume this is true. But whenever a conflict occurs between the Federal and State authorities, whether in the right or wrong, the former is sure to prevail against the latter—hence, the necessity and propriety of restraining this strong power, and of guarding the weak against its usurpations and encroachments; and, at the same time, it would be wholly useless to impose any additional restraint upon the State authorities, because of their comparative feebleness, their want of strength to resist the Federal authorities. It is notorious that they cannot long make defensive, much less can they make offensive war.

But, how to remedy those evils, and at the same time to guard and protect the people against the hurtful and pernicious consequences of these alarming conflicts, is the question. To effect this desirable object, said Mr. M., is what the proposition contemplates. Can there be any danger in making the experiment? I put this question most respectfully, and with due deference; but I put it emphatically—Can there be any danger in making the experiment?

There are other difficulties, too, resulting more, I believe, from the happy, or rather the unhappy, faculty we have in construing or misconstruing the constitution, than from any real defect in that instrument. Look at the various and contradictory constructions which have been put upon it, not only by subordinate departments, but by the highest functionaries of this Government; and from thence let any man, if it be possible for him to do so, move on to the conclusion that it is either wise or politic to compel all the departments of the State governments, legislative, executive, and judicial, all of whom are sworn to support the Federal Constitution, as well as their honors, to yield their own opinions upon the constitutional validity of State laws, and to bow submissively to the constructive dictum of three members, a minority of the Federal Judiciary.

But the Legislature of Kentucky did pass a

law, the validity of which was contested by the nest of worthies with which that State abounds, and has long abounded, and who are known by the mild name of land speculators. The Federal, not the Delphic oracle is consulted, and the response is, that "the law is unconstitutional and void, the first settlers of that district having bartered away a portion of that power and sovereignty which belongs to, and is exercised by, every other State in this Union, and by every other people or Government on the globe, having bartered away the right of succeeding generations, and succeeding legislators, throughout all time to come, to suit their legislation and their laws to the ever-varying condition of things, which necessarily arises in the progress of civil society." Such, in substance, is the response which has been uttered and proclaimed to the world; and even more than this, for it goes to establish the fact, that the said first settlers of the district not only banished from Kentucky that portion of her sovereignty, but that they absolutely extinguished it; that they did not even leave it with Virginia, which State, I verily believe, if she had the power, would grant us relief in some form or other.

But, what is the consequence of this decision? The cords of peace and social intercourse, by which society is bound together like a band of brothers, is cut asunder; the home of the husbandman is again rendered insecure; the hand of industry is paralyzed, and discouraged from the performance of its duty, the oracular music of this trio of the Federal judiciary having fallen sweetly upon the ears of a set of men, who ought to have been drummed out of Kentucky many years ago, with a certain appropriate march at their heels, announcing to them that the delectable and happyfying business of land-jobbing would again become profitable, up they spring, like so many birds of prey; with keenly whetted beaks, they pluck the crumbs from the hand of honest industry; and they pluck anew at the vitals of society, the very heart-strings of which they would pull away if they could. Now, as the response runs, "the bleeding victim may writhe in agony, but there is no power beneath the sun, by which a remedy can be applied. It is true, that society is greatly retarded in its march to prosperity and happiness, but the die is cast, and, like the decree of fate, it is unalterable!"

Such are the effects of a decision which has been given by this, not soon to be forgotten—three; to whom your laws seem to attach something like infallibility, but who could not, by possibility, in their situations, have understood the subject.

Now, what opinion would a stranger form of the boasted excellence of our constitution, after being told of the decisions of the Executive and Judicial branches of this Government upon it, and of the consequences resulting from those decisions? The one denies the existence of any power in Congress, or elsewhere, to pass a good and wholesome law, the effect of which

would be, in a thousand ways, to promote the national interest, and to bind together, and forever to perpetuate this grand and noble Confederacy; the other denies the existence of any power in the Legislature of a State, to remove one of the most afflicting evils—an evil of such magnitude that it is an abomination to the land where it exists—from society.

I understand this decision of the court to mean nothing more, or less, than that their honors have a right to take the consciences of all the departments of the State governments under their sovereign care and protection. I understand it to be a denial of the right of the Representatives of the people, by statutory provisions, to regulate the affairs of the people. If the doctrine maintained by the court be correct, their own peculiar notions of what is equitable between man and man, between adverse claimants of land, and so on, as the different individual cases may arise and be submitted these august three, is to be the supreme law of the land. Have we come to this? Is it true that our ancestors or predecessors have deprived us of the power of passing a plain law, which may be read by the plain, unsophisticated farmers of our country, as they run; and a law which, by reading, they may understand? Are we to have no page in our statute books, indicating to the toiling husbandman what are his rights, or in what way the fruits of his labor and industry are secured to him? Instead of referring him to the statute books for such information as he may desire respecting the laws, is it intended to turn his eyes upon the judges of the Supreme Court, and tell him that the law is, or will be, whatever their honors may choose to make it?

But, sir, said Mr. M., the fault is not in the constitution. It is in those who construe and misconstrue that instrument.

In referring to these facts, said Mr. M., I intend no ungenerous imputation against those high functionaries of the Government—no disrespect whatever; for they have the same right to their opinion that I have to mine; and it is as much their duty to exercise it. But, having given an opinion which I conceive to be most glaringly erroneous, and most afflictively injurious and hurtful to those whom I have the honor immediately to represent, my object is, as it ought to be, to effect an amendment to the law, which will go to save my countrymen in future from the effects of a decision to be given by this feeble, and yet powerful three. And my reference to the opinion of the President has been made for the purpose of showing that you do not, by placing a man in an elevated station, render him infallible; and thereby, to prove the unsoundness of the policy that would bestow upon such a tribunal as this, the power of dictating according to their peculiar notions of what is the orthodox construction of this charter of our rights, to each, and to all of the departments of the State governments. Three individuals! a majority of the court, as

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*Day of Adjournment.*

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now organized, truly; but a minority of the whole court are to decide upon the constitutional validity of State laws; and to annul adjudications of the State courts; and from their decision there is no appeal; it is irrevocable.

Before, said Mr. M., I consent to the lodgment of such a power, in the hands of such a tribunal, I must be convinced that the whole three are beings of a superior order; that they are not the slaves of human passion; that they do not love power; that they are not to be set in motion by that powerful spring of human action, called self-interest; that they have an exemption from all the frailties of human nature; and, in fine, that the link which they form in the chain of created beings, is at least half way between that little forked, feeble animal, that inhabits this our planet, and those superior intelligences that fill the celestial regions. For be it remembered, that this is the controlling power of this Government—a power of such superior dignity, that it has become the Government itself; and he that questions, or attempts to expose its decisions, is sure to be accused of having a devil, or to be denounced as a rebel against his country.

Mr. McDUFFIE, of South Carolina, rose and opposed the amendment, as practically operating to leave the constitutionality of any State law interminably uncertain. He vindicated the decision of the Supreme Court, in the case of Cohens, (formerly referred to in the debate on Mr. LECHE's resolutions,) and maintained that that decision was virtually a decision of the question whether the United States have or have not a Government.

Mr. COOK, of Illinois, said, the Constitution of the United States secures to the citizens of each State the rights of citizens of the several States. The citizens of one State may hold property in any other State. They may contract with the citizens of any other State, and are entitled to a just remedy to enforce such contracts. Might it not happen that non-residents might acquire large claims against the citizens of any given State? Such, for example, as was the case a few years ago in relation to Eastern merchants with the people of the West. Such, indeed, as was the case with the people of the State whence this proposition originated, and the merchants east of the mountains. In such a case, if the debtor State should adopt unconstitutional measures for the relief of its citizens, would not the principle requiring the concurrence of a large portion of the Judges of the Supreme Court to correct such a procedure, more expose the creditors to the injury, than the usual mode of decision would the debtors? Such a principle, indeed, he conceived well calculated to alter the whole theory of our Government.

The object of Government was as well to protect minorities as majorities. This principle would go far to destroy those rights.

But the particular case, which might by possibility occur for the decision of this tribunal, was one of grave and serious importance. He said

the United States had admitted the State he had the honor to represent into the Union, under a compact that slavery shall not exist within its limits. At present, a large portion of the citizens of that State were under the impression that the introduction of slavery would tend greatly to relieve their pecuniary embarrassments, embarrassments which, indeed, afflicted every portion of the West. Acting under the influence of a strong anxiety to relieve themselves from their distress, many of them were now disposed to test the binding character of this compact, and to abrogate it. Without intending to express any opinion on the effect of this compact, he would remark that, should a majority of the people decide on the adoption of the measure, it would doubtless make a case for the decision of the Supreme Court; and, should it happen, it will be a fearful question. It will involve nothing less, sir, than the balance of power between the slave and non-slave-holding States. Those who witnessed, as well as those who know of, the convulsive discussion in this House on the Missouri question, cannot fail to appreciate the magnitude of this subject. In deciding that question, should it ever arise, if a majority of that court shall be found to decide against the validity of the act of the State, but not a sufficient majority under the provision now under consideration, it could not fail to shake the nation to its centre.

While this tribunal may be called on to decide questions of such momentous magnitude, he thought it behooved the House to examine well the effects of the principle now proposed. For such examination, we certainly are not prepared at this time, and the amendment, therefore, should not now be adopted.

Mr. A. STEVENSON, of Virginia, suggested that, as the session was far advanced, and this subject was of great moment, it would be most expedient to withdraw the amendment at this time.

Mr. METCALFE expressed some reluctance at adopting this course, but finally consented to withdraw the amendment; and, having done so—  
The bill was ordered to a third reading.

TUESDAY, May 18.

*Day of Adjournment.*

Mr. CONNER, of New York, moved to consider the joint resolution on a day of adjournment, and called for the yeas and nays on the question of consideration; which were ordered.

Mr. OULPEPEE, of North Carolina, was opposed to an adjournment at so early a day as even the latest which was proposed. He adverted to the appointment of a committee of investigation on charges preferred against a high officer of the Government, and to the summons which had been despatched by an officer of the House for the person who preferred those charges. The House had been heretofore informed that, allowing time for going and returning, the individual in question

might be expected to arrive here by the 26th of this month. For his part, he said, he was unwilling to go away without allowing a reasonable time for the return of the messenger, &c. The charges which had been preferred, had been considered of sufficient importance to entitle them to investigation, and he was not disposed to adjourn until that investigation was completed, and the whole facts of the case reported to the House, when, he said, he would express his opinion of the merits of it, regardless of consequences, and he hoped the House would do the same.

Mr. WAEFIELD, of Maryland, said, that every one knew that the Sergeant-at-Arms of this House had gone for the purpose of bringing to this House Mr. Edwards, to be examined respecting certain charges which he had preferred against one of the highest officers of the Government. Whether, in sending for him, the committee of this House had done right or wrong, was not now the question; but, having done it, he was of opinion that a due respect to the parties interested, to public opinion, and to consistency in the course of this body, would induce the House, at all events, to continue the session until the person to whom he referred should have had a reasonable opportunity of reaching the Seat of Government. Otherwise, said he, in what situation before the public shall we present ourselves? He was as willing as any gentleman to bring this session to a close; but, a due respect to the distinguished officer whose conduct is arraigned, and to every consideration connected with the subject, forbade, in his opinion, an adjournment earlier than the 31st instant; which day, therefore, he proposed.

Mr. WICKLIFFE, of Kentucky, put it to the House, whether, under the circumstances known to them, they would remain in session to await the arrival of the officer of this House. He had just been informed that the Sergeant-at-Arms arrived at Louisville, so as to leave that place for Edwardsville on the 4th of this month; by the 10th of the month he may have reached Edwardsville; by the 17th he may have arrived at Louisville, on his return: it will take 8 or 10 days to get thence to Wheeling, and three or four days thence to this place, supposing no interruption of the journey to occur: and when it is recollected that there was no regular chain of steamboat navigation, and that travellers have sometimes to wait several days for a passage, could it be in the contemplation of any gentleman to wait here until the messenger returns—say, till the 15th, or even the 10th of June. He wished the resolution were made blank, so as to fill it with such a day as a majority of the House should be found to approve.

Mr. WEBSTER, of Massachusetts, said that, when this subject was before the House the other day, the member from Illinois stated, from his knowledge of the distance, &c., that an answer to the summons of this House might

be expected by the 23d or 24th of this month. From the facts which had since come to the knowledge of the gentleman, Mr. W. said, he should like to know what was his present opinion on that subject.

Mr. COOK said that, when he made a statement on this subject some days ago, it was impossible that he should be apprised of the obstructions to the progress of the messenger of the House. He had stated that he might return by the 23d or 24th of the month, but that was upon the supposition that no difficulty had occurred in his progress in the river. Since making that statement, he had seen a letter from the Sergeant-at-Arms, that he was not able to leave Louisville before 4 o'clock in the afternoon of the 4th of May. He might reach Edwardsville in five or six days. If an opportunity should present itself for resuming his journey by water, he might return to Louisville in five days, say by the 15th of this month. It was not probable that he could reach this place in less than fifteen days after his arrival at Louisville. It would not be reasonable, therefore, to calculate on the arrival of the messenger or Mr. Edwards sooner than the 30th of the month, under any circumstances. And if the House is disposed to wait for him, said Mr. C., as I sincerely hope it is, that object will be entirely defeated by fixing on an earlier day for the adjournment than the last of this month. Mr. C. repeated, that he most sincerely hoped that the House would continue in session until Mr. Edwards should arrive.

Mr. MCLANE, of Delaware, said, that there was no member of the House who would remain here, were the session prolonged, at greater personal inconvenience, or sacrifice of interest or of feeling, than himself. But it was too late now for gentlemen to listen to considerations of that description. The decision has been taken. Every gentleman must have known, when this investigation was instituted, that it would be attended with serious inconveniences. I was myself fully aware of it, said he, and it was for that reason, among others of higher import, that I was opposed to the institution of this committee of investigation. The House, however, determined to go on, and it does appear to me to be due to the parties and to the character of the House, that it shall now be carried through, and that every opportunity shall be given, to all the parties concerned, for a full investigation. Laying aside all personal considerations, the public good demanded this course. From what had been said by the honorable member from Illinois, it was apparent that an earlier day for the arrival of Mr. Edwards, than the last day of the month, could not be fixed. But the reasons which influenced him, Mr. McL. said, would prevent him from voting, at this time, to fix any day of adjournment. The Committee of Investigation had sent for the individual who preferred the charges which are under investigation. If I understand the process with which our officer

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is charged, said he, it does not authorize the Sergeant-at-Arms to bring this individual here. It is a mere summons to him to attend, which he may obey, or not. He probably may not be ready—few individuals would be ready, at so short a notice, to set off on so long a journey, the day he receives the summons. In any event, he cannot get here before the thirty-first of the month, and perhaps not for some days later. And for what purpose, sir, have we sent for him? Is it to present himself here, and say, "Here I am," and thus let the business end? That is certainly not my view of the case. Here is a charge which the House has deemed of sufficient importance to institute an inquiry in relation to it. They have sent for Mr. Edwards, to deliver what testimony he may be able to afford in relation to it.

Mr. BUCHANAN, of Pennsylvania, entirely concurred in most of the views of the gentleman from Delaware, but he differed from him as to his conclusion. From the information which had been given to the House, by the gentleman from Illinois, it was perfectly evident, and must strike the mind of everybody, that Mr. Edwards cannot be expected to arrive here before the fourth or fifth of June. If the House waited for his arrival at all, consistency and a sense of duty would require them to remain in session until he was examined, that the information which he possesses may be eviscerated and laid before the House. On a moderate calculation, this will take to the 10th of June; and said Mr. B., I ask whether we will delay our adjournment till that day on this account, or whether we shall not rather adjourn at an otherwise convenient season? If I thought, that, to await the arrival of Mr. Edwards, was of any importance to the country, or to the distinguished officer whose conduct is implicated by the charges, I would remain here at any sacrifice. But I am not of that opinion. When Mr. Edwards presented his charges to this House, he referred for the foundation and support of them to documentary testimony, and to that alone. That testimony, with the charges, is in the possession of as able and impartial a committee as was ever raised in any public body. I am persuaded that the committee is, or can be in one or two days, ready to report upon that testimony. Now, I ask, how can the Secretary of the Treasury be implicated by an adjournment, without waiting for Mr. Edwards? The proofs are here; the committee is diligently engaged in the examination of them, and are ready (or can be in a short time) to make their report; and I protest against the idea of the House having committed itself, or pledged itself in any way, to wait for Mr. Edwards.

Mr. HAMILTON, of South Carolina, said he was as little disposed as his friend from Delaware to adopt a course calculated to preclude any decision on this subject, that was due to the character of the House, or properly subservient to the ends of justice. But, believing

that the views which he had taken of this subject were erroneous, he could not but believe, if the House came to the decision which he recommended, it would not subserve the purpose of justice, but only vexatiously prolong the session. He begged leave to call the attention of the House more directly to the subject involved in this question. What is it? said he. An officer who has received an appointment within the gift of the Executive of this country, has made a charge against an officer in the Cabinet of the Executive. Instead of directing this charge to his proper chief, the Executive, the accusing party has improperly, and I regret it, thrown it into this House. Under the excitement of the moment, which I also regret, this charge took what I conceive an improper direction in this House. It has been put into the possession of a committee, acknowledged on all hands to be exceedingly well qualified to investigate it. But, in reference to the course which the House ought now to take, Mr. H. said, it is very proper that the grounds of the accuser himself should be taken into consideration. In support of his charges, to what does he refer us? To his own testimony hereafter to be delivered? To oral proof of any description whatsoever? To any evidence beyond the walls of the Capitol? No; but to documents already in the possession of the House. Under a belief that this individual may have done wrong to the character of the officer to whom his charges relate, a messenger has been despatched by this House to summon him here. That was supererogatory, for the Executive had anticipated this act of the House, and, with great propriety, because that is the branch of the Government to which he is at present amenable, transmitted to him instructions to await the proceedings of this House. His presence here, however, Mr. H. said, was not in the slightest degree material to the decision of the case before the House. Now, if the individual preferring these accusations could have any just ground of complaint against the House for not awaiting his arrival, he admitted it would be proper that they should do so. But could he, under all the circumstances, have any cause of complaint on that score? Mr. H. conceived not.

Mr. MEROER, of Virginia, said, if he was unwilling to fix the time of adjournment at present, it was not from regard to the accuser, whose charges had, from the choice of the individual himself, been made from a point distant from the Capitol, when he might have made them here, had he supposed it due to himself to be present at their investigation. Certainly, after delaying the mission to Mexico for eighteen months, the Executive would have had no difficulty in granting the Minister five or six days more for that purpose. With regard to the interests of the accused, and of the country, one thing it was highly important to know, viz: whether the testimony of this individual was considered by the Committee of In-



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vestigation to be material or not. This House had no agency in sending for him. The warrant was issued antecedent to any proceeding on the part of this House upon the subject. We are to infer, from the fact that the committee sent for him, that Mr. Edwards is deemed a material witness. The committee had no right to send for him unless his testimony was considered important. We have, therefore, a right to suppose that his testimony is material, because otherwise he would not have been sent for. If his testimony is material, and we adjourn before his arrival, the public opinion will be, that we have arrested the investigation of his charges. If that be the only question to be decided, my mind, said Mr. M., is made up.

Mr. MANGUM, of North Carolina, said he was as anxious as any member of the House could be, to leave this wretched place, and return home, if, contrary to his opinion of the matter, a sense of duty would allow of an adjournment as early as was proposed. It had been said that the act of calling for Mr. Edwards was not the act of this House, and, further, that the presence of the accuser is not necessary—and that he himself has shown that it is not. But, said Mr. M., we have committed the investigation of this matter to a committee composed of gentlemen esteemed on all sides of the House for their superior intelligence and unquestionable integrity. That committee, in its wisdom, has decided, and, I believe, with perfect unanimity, that Mr. Edwards should be brought before them. It is to be presumed there are some matters of fact which he is expected to disclose, which make his presence necessary; and, until I hear to the contrary from that committee, I shall oppose my humble opinion and voice against an adjournment before Mr. Edwards's arrival. And this view of the case appeals most strongly, not to the friends of the distinguished person who stands accused before us, and in so delicate a relation to this House and to the nation, but to the friends of Mr. Edwards. What will be the consequence if, after the solemn decision of our committee, that it is necessary Mr. Edwards should be brought before this House, we should say his presence is entirely unnecessary, and that a reference to documentary testimony only is necessary? If such be the fact, why is it not announced to the House from the proper source, the committee which sent for him? It is not announced, and I, therefore, presume that the opinion still exists that Mr. Edwards ought to be here. And, whilst this is the fact, we shall treat the just claims of this high officer (the Secretary of the Treasury) with worse than scorn and contumely, if, after having sent for his accuser, we adjourn before he comes, and deprive the accused of the opportunity of a full and fair investigation of these charges. On the other hand, what have you done? Have you not, to a certain extent, endorsed these charges? That which never could have stuck to the character

of the Secretary, have you not fixed there, by a solemn act, in recognizing the claim of these charges to investigation? And will you abandon the investigation, and, as far as you can, suffer the obloquy to remain?

Mr. ALEXANDER SMYTH, of Virginia, then rose, and said, that he should vote for adjourning on the 31st of the present month. He considered the House bound to allow a reasonable time for the arrival of the person whose attendance it had required. Public opinion, with what justice he should not say, would set down every individual of this House, on one side or the other, in this affair, and would attribute every part of their conduct to partiality and design. It was the duty of the House, as much as possible, to avoid giving occasion for such reflections. It had been objected that the sending for Mr. Edwards was only the act of a committee. True: but that committee received its authority to send for him, from this House; they have reported their proceedings, in sending for him to this House, and this House has transmitted those proceedings to the President of the United States; and thereby given to the act of sending for him every sanction which the circumstances would admit. The accuser had made a variety of statements in relation to the officer accused; it was proper that he should be put upon his oath, and cross-examined. On the whole, considering the public interest, the dignity of this House, and the character and public station of both the individuals concerned, he could not consent to vote for an earlier day than the 31st instant.

Mr. FOSTER, of Georgia, said, he entirely concurred in the opinion that, granting all sufficient time for the arrival and examination of Mr. Edwards, the House might be able to adjourn by the 7th day of June, and he proposed that day accordingly. It was due to the character of this House that it should remain here till that time, even at great expense, and great personal sacrifice. He adverted to the necessity of acting on this case with precision and on mature reflection, that improper conclusions may not be drawn, as to the motives which govern the House in its course, by the people of the United States. This memorial of Mr. Edwards, said Mr. F., bears date the 6th of April, and, by due course of the mail, should have arrived here on the 10th day of that month. The first information which the House had of the existence of this packet, was on the 19th of April; and, by a singular coincidence, that was the very day when the Senate fixed upon a day for the adjournment of the two Houses. The House of Representatives, with a feeling which a sense of justice was calculated to inspire, instituted a committee to investigate the subject, and clothed it with power to send for persons and papers. On the 21st, a resolution was submitted by me, which was not agreed to, to communicate the fact to the Executive. On another day, a nearly similar resolution was offered by another gentle-

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man. On the 22d, the committee reported a part of their proceedings, and advised this House that they had ordered the messenger of the House to pursue Mr. Edwards, for the purpose of calling him before them. This messenger left the city of Washington on the 24th. To make the greater speed, he passed by Baltimore, under the absurd pretext that he was liable to be interrupted in his journey by the usage of the stage office giving preference to other passengers, as if it were possible for any stage-coach usage to arrest the messenger of this House. He went down the river from Wheeling, and arrived at Louisville on the 3d; and we are now informed that it is impossible he can arrive here before the 4th of next month. In what situation, sir, shall we be placed if this investigation be suspended; if the House adjourns without waiting for this individual? What was the object of the address in which the charges have been preferred? To defend the reputation of the late Senator from Illinois? To defend himself? How? By accusation of another? It is not worth while to mince matters in a case of this kind. It is impossible for any individual—

Mr. TREMBLE, of Kentucky, here rose, with permission of Mr. FOSYTH, to explain, that the messenger of the House, in going by Baltimore, had acted by the advice of others who knew, by experience, that it was the surest route, with a view to expedition.

Mr. FOSYTH disclaimed any intention to blame the messenger, having no doubt he had acted upon advice and information of others—there certainly was a day lost by his taking that route. Mr. F. resumed his argument. It is impossible, said he, for any member of the House to read this address, to believe that the object of the person making the charges was to punish the individual charged, through the agency of the powers of this House. My own impressions are, that the individual expected that his address would be printed, under the sanction of this House, and that no further notice would be taken of it; and that it would be the foundation for assailing the reputation of the individual whom he accuses, through the ensuing summer—for what purpose, everybody can understand. This object has been disappointed, by the investigation which the House had ordered. In justice to the individual whose conduct is assailed—I speak not of him as an officer; not of the purity of his character, and the integrity of his conduct, which I believe to be, in truth, his only reproach—but of his pretensions to the first office in the gift of the people—this investigation should be fully prosecuted, unless this House means to make itself a party in the projects of the individual who has addressed it. A portion of the charges contained in his address have been rung through the country these twelve months past, or more, without effect. A part of them have been investigated in this Hall, to the utter confusion of the assailants of the Secretary. What is the

object of the address which now embodies them? Unquestionably, to give to them an artificial importance, to put a stamp of credit on what had been already condemned by the people. And by whom is this investigation carried on? I mean to excite no unpleasant feeling in the mind of any gentleman in this Hall; but it is proper, in coming to the determination which we are to make on the question now before us, that all things should be considered, which bear upon it. It is known that there were, at the commencement of this session, five individuals presented to this House as candidates for their favor and that of the people, for the Presidential office. It is known that a majority of this House is favorable to the claims of the four other candidates in opposition to the claims of the remaining one. It is by this House, thus disposed, that this investigation has been instituted. What will be the inference, if these charges are left in suspense, by the adjournment of this House? I ask gentlemen to consider, what will be the effect of such a course? I am sure, sir, that there is no member of this House who is desirous to do injustice to the individual in question; but I put it to every member of this House, whether he does not at least leave a “loop to hang a doubt upon,” if he agrees by his vote to an adjournment before Mr. Edwards arrives. All that is wanted is, that the individual sent for should be brought here, and questioned—“What have you more to say? What are these defensive accusations which you talk about as having in reserve?” A single hour, after his arrival, will suffice for his answers to these simple interrogatories. It is due to the nature of the subject, that we should wait for the arrival of Mr. Edwards. As it is stated, that there is reason to believe he may be here by the 30th of the month, and seven days will be sufficient for every possible allowance of time for his examination, and a report by the committee, and decision by the House upon it, I am in favor of fixing on the 7th June as the day of adjournment.

Mr. COOK said, it must be painful, it could not but be painful, to a dignified and enlightened body, whose duty it was most solemnly to decide upon the merits of the matter before the committee of investigation, to see, upon an incidental discussion of this description, the motives of individuals misrepresented, and erroneous statements made, either from improper views, or because the facts were not correctly understood. The honorable gentleman from Georgia, said he, has stated his belief as to the motive of the individual who lately transmitted an address to this House, which he has ascribed to motives, at which, if true, every honorable mind ought to revolt. He stated, that the memorial was presented, not with the hope of bringing on an investigation, but to have it printed without being investigated. If I have misunderstood the gentleman, he will correct me—[Mr. FOSYTH said, the gentleman under-

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stands me correctly.] I am not now, nor at any other time, if I can avoid it, about to give any opinion as to the merits of this controversy—but let the language of the memorial speak for itself. In the 18th page of it, the memorialist states that, under calls for information respecting the illicit introduction of slaves into the United States, information called for by the House had been withheld, and says, in making the statement, "I challenge investigation." And, at the conclusion of his memorial, he says, that, if his charges are made in malice or in falsehood, it is a misdemeanor that would prove him unworthy of the office he holds, and expressly invites the Secretary, or his friends, to make the charge against him. Language like this, said Mr. C., is in direct repugnance to the idea that he wishes to shrink from an investigation of his charges, and that he merely wished to afford food for the newspapers during the recess of Congress. Whether it be true or not, I ask whether it is proper for a member of this House, who is to pass upon this case before God and man, to express so decided an opinion, which would go to stamp infamy upon one of the parties in this controversy. I ask whether this is consistent with the dignified attitude which we ought to occupy. The honorable gentleman had better wait for his opinions until the report from the committee be made, for that committee, able and honest as he believed them to be, would present nothing but the truth in their report. Then is the time to express such an opinion, if the facts shall warrant it; and, sorely as I shall regret it, on account of the particular relation in which I stand to that individual, let the power of truth be brought upon him—if it be sufficient to crush him, if due to justice, and the character of the country, let it be so. I will not undertake to express an opinion, as to the merits of the Secretary—I will wait until the facts shall come in solemn form before us—in that form which shall justify us in expressing an opinion thereupon, before this House and the nation. If malice be proved, let the seal of reprobation be stamped upon the author of the address. Sincerely as I should lament it, my duty to myself and to my country would oblige me to express the truth upon the evidence before us.

Mr. FOSYTH said, the gentleman from Illinois was not well acquainted with the address, or he would not have put upon it the construction which he had: for the author of it expressly says, after making various charges against the Secretary of the Treasury, "I do not ask for an investigation of his conduct;" and yet, with this staring us in the face, the gentleman tells us that the object of the address was an investigation! Whether the opinion I have formed of the motives of the addresser be just or not, is for the House and the country to judge. It has been formed from a fair and simple view of the facts. The conclusion appears to my mind, and must be to every prejudiced mind, irresistible. Whether I am disqualified

by this opinion, forced upon me by facts universally known, from passing upon this case, it is not for the gentleman from Illinois to undertake to determine.

The question was then taken on fixing on the 7th day of June, and decided in the negative.

The question was then taken on the first day of June, and decided in the negative, 95 to 75.

The resolution was then made blank.

Mr. SAUNDERS, of North Carolina, declared that he had voted for the latest day, and for the 1st June; but as the House appeared to be determined not to allow time for Mr. Edwards to arrive, he should now vote for the earliest day proposed.

After a few observations from Mr. CAMPBELL, of Ohio, who proposed and advocated an adjournment on the 22d, and from Mr. ROSE, in favor of the 27th instant, the question was taken on filling the blank with that day, and agreed to, 101 votes to 73.

Thus amended, the resolution was passed, and returned to the Senate, who agreed to the amendment.

And then the House adjourned.

WEDNESDAY, May 19.

*Piracy in the West Indies.*

Mr. POINSETT, from the Committee on Foreign Affairs, to which was referred so much of the President's Message as relates to "piracies, by which our commerce in the neighborhood of the island of Cuba has been afflicted," and to the "depredations which have been committed on the lawful commerce of the United States, under other pretences, and other color, in the neighboring island of Porto Rico," made a report thereon; which was read, and laid upon the table. The report is as follows:

That the prompt and energetic measures adopted by Congress, at the commencement of their last session, seconded by the zeal and enterprise of the officers intrusted with the command of the light squadron destined to suppress piracy in the West Indies and the Gulf of Mexico, have succeeded in putting a stop to the piracies by which our commerce had been afflicted in the neighborhood of the island of Cuba, as far as a foreign force, unaided by the public authorities of the island, could succeed in accomplishing this object.

These piracies had been continued for years, under the immediate observation of the Government of the island of Cuba, which, as well as the Spanish Government, has been repeatedly and ineffectually required to suppress them. Many of them have been committed by boats, which remained concealed in the harbors and under the headland, until they discovered their prey, which they captured, plundered, and destroyed upon the shores of the island. When pursued by a superior force, the pirates have escaped to the shore; and our commanders have been refused permission to land in pursuit of them, even on the desert and uninhabited parts of the island.

It appears, from the most respectable testimony, that these atrocious robberies were committed by

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persons well known in Havana and in Regla, where they were organized into a band; and that the traffic in their plunder was carried on openly; and that they were sometimes committed by vessels equipped at Havana and at Regla; and that they cautiously avoided molesting Spanish vessels, but attacked, without discrimination, the defenceless vessels of all other nations.

The present Captain General of the island of Cuba has acted with great courtesy towards our commander and officers engaged on this service, and has co-operated with them, by arresting the pirates who had escaped to the shore, nor has he complained when our officers have found it necessary to pursue them, and to break up their haunts on the desert and unfrequented keys that surround the island. In no case, however, within our knowledge, where pirates have been seized by the authorities of the island, have they been brought to that punishment their crimes merited; and those who are well known to have fitted out piratical cruisers, and to have sold their plunder with the utmost notoriety, are suffered to remain in Havana and Regla, in the unmolested enjoyment of the fruits of their crimes. Under these circumstances, the British and American squadrons in those seas may repress piracy, so long as they continue cruising in the neighborhood of the island; but there is reason to apprehend, that, on their removal, similar outrages on our commerce will be renewed. In the opinion of your committee, piracy can only be effectually suppressed by the Government of Spain, and by the authorities of the island taking the necessary measures to prevent piratical vessels or boats from being equipped or sailing from any part of the island, and to apprehend and punish every description of outlaws, as well those who actually commit acts of piracy, as those who receive and traffic in goods plundered on the high seas.

The commerce of the United States with the island of Cuba, superior to that with Spain and all its other dependencies, and fully equal to that with France, claims in a peculiar manner the protection of Government. The safety of that commerce requires that the Government of Spain should be urged to adopt prompt and vigorous measures, effectually to suppress piracy in the neighborhood of the island, and to co-operate with the maritime powers most interested in effecting this object; and your committee are of opinion, that, for the protection of this important commerce, and of the persons and property of our fellow-citizens, when in the ports of the island, the residence of consuls, or authorized commercial agents of the United States, at these places, is absolutely necessary, and ought to be insisted upon.

Privateers, distinguished from pirates only by commissions of most equivocal character, from Spanish officers whose authority to issue them has never been shown, have been equipped in the island of Porto Rico, and have committed outrages and depredations upon the persons and property of the citizens of the United States; outrages, which no commission could divest of their piratical character. With no other naval force than a frigate, a brig, and a schooner, they presumed to declare a blockade of more than twelve hundred miles of coast. To this violation of all the rights of neutrality, they added the absurd pretension of interdicting the peaceable commerce of other nations with all the ports of the Spanish Main, upon the pretence, that

it had heretofore been forbidden by the Spanish colonial laws; and, on the strength of these two inadmissible principles, they issued commissions in the island of Porto Rico, to a swarm of privateers, which have committed extensive and ruinous depredations upon the lawful commerce of the United States. Frequent remonstrances have been made, both to Spain and to the authorities of the island, by the Executive, without producing any effect. During the last summer, a special agent was sent to Porto Rico, to obtain the restitution of American vessels captured by the privateers of that island, and to collect documentary evidence of the trials and condemnation of others. To the first demand, the political chief referred the agent to the Government of Spain, declaring that he could not, without an open infraction of fundamental laws, take cognizance of causes legally determined; that the officers of that province could not proceed, but by the express orders of the Supreme Government, and to that, the United States, after the example of Great Britain, must have recourse.

It appears by the testimony collected by this gentleman, that it had been the practice of these privateers, not to send in their prizes to the large and frequented ports, where impartial judges could determine on the validity of the capture, and where the captured could have the means of fairly defending their rights; but to send them into distant and obscure seaports, where the courts are notoriously corrupt, and where the captains and owners were deprived of the means of making even statements of their cases. There are many instances of vessels condemned most unjustly; and, even where they have had the rare good fortune to escape condemnation, their owners have been subjected to ruinous costs and charges; and, in some cases, before the vessels have reached the port, the cargoes and property have been plundered, and the officers and crew treated in a cruel and barbarous manner.

In San Juan, the principal town of the island of Porto Rico, attempts have been made to assassinate the commercial agent of the United States, and the master of a merchant vessel, in order, as they believe, to prevent them from taking legal measures to recover property unlawfully captured. Your committee deem it unnecessary to enumerate the vessels that have been captured and condemned without the color of justice, or to recapitulate each particular case of barbarous outrage committed upon the persons and property of the citizens of the United States, by privateers fitted out in the ports of Porto Rico; outrages, which, in their opinion, would justify reprisals and a rigorous blockade of the ports of that island. Your committee forbear to recommend the immediate adoption of those measures, only because the Minister of the United States at Madrid has been instructed to remonstrate with His Catholic Majesty on the culpable neglect of the Spanish authorities in the island of Porto Rico, and to require indemnity for the losses sustained by the citizens of the United States, from the lawless conduct of the commanders of privateers, bearing His Majesty's commission. That this remonstrance and demand was not made earlier, arose from circumstances beyond the control of Government. The former Minister had left Madrid before his instructions on this subject reached that place, and the subsequent invasion of Spain by France, and the conduct of the French commander of the blockading squadron off Cadiz, retarded the

arrival of our present Minister. While the committee advise, that Government wait the result of the negotiation now pending at Madrid, or, at all events, the answer to the remonstrance of our Minister at that Court, before a resort is had to reprisals and blockade; they earnestly recommend, that two or more small cruisers should be constantly kept off the ports of San Juan, and in the Moro Passage, so as to protect our commerce, and intercept at the entrance of San Juan, Aguadilla, Mazaguez, Cape Roco, and Ponce, American vessels unlawfully captured by Spanish privateers; and, that the commanders of the United States vessels of war be instructed to capture, and send into a port of the United States for trial, any privateer that commits an outrage on the persons, or plunders the property, of citizens of the United States, on the high seas, whenever good and sufficient testimony of such piratical act can be obtained.

On motion of Mr. CONWAY, the bill "concerning pre-emption rights in the Territory of Arkansas," was taken up, and ordered to a third reading.

On motion of Mr. COOKE, the House went into Committee of the Whole, (Mr. BRENT in the chair,) on the bill from the Senate, "making appropriation to enable the President of the United States to hold treaties with certain Indian tribes; and, being reported without amendment, was ordered to a third reading."

On motion of Mr. WILLIAMS, the House went into Committee of the Whole, (Mr. BURTON in the chair,) on the bill from the Senate, "for the relief of Hezekiah Langley and Benjamin M. Belt," and "for the relief of Alexander McNair, of Missouri."

#### *French Spoliations.*

Mr. FORSYTH, from the Committee on Foreign Relations, to which have been referred during the present session sundry petitions and memorials from insurance companies, and from merchants, and other citizens of the United States, upon the subject of spoliations committed on their commerce, on the high seas as well as in certain ports, under the orders or decrees of the Government of France, subsequent to the year 1806, made a report thereon, which was laid upon the table. The report is as follows:

The Committee of Foreign Relations on the several petitions of Archibald Gracie, Ezra Davis, Matthew, Thomas S., and Levinus Clarkson, William Gray, and others, of the Merchants' and Insurance Companies of Philadelphia, of the merchants and underwriters of Baltimore, referred to them by the House, report: That the petitioners ask the intervention of Congress for the recovery of their just claims against France, for spoliations committed, and property seized or destroyed, under different pretexts, since the year 1806. These claims are alluded to by the President, in his Message, at the opening of the present session of Congress, as resting upon the same principle with other claims which have been admitted by the French Government, and are the subject of the correspondence of

the Minister of the United States with the French Government, communicated to the House of Representatives on the 5th of February last. To this correspondence the attention of the House is invited, for a full and fair understanding of the claims of the present petitioners, and of the other citizens of the United States, having similar demands against France, but who have not joined in this application for redress.

The committee have seen, with surprise, that, although the attention of the present Government of France was especially invited to this subject in 1816, and has been repeatedly recalled to it, since that time, that France has not yet thought proper to enter upon the discussion of it. No other answers have yet been given to various official communications of the Minister of the United States, than those required by the mere obligations of international courtesy.

The committee are of opinion that measures ought to be taken to impress upon France the necessity of an early and definite adjustment of this subject; and they would offer such measures to the consideration of the House, if the hope was not entertained that the Government of France would be found, during the ensuing Summer, prepared to investigate it.

The committee are confident that a fair examination, entered into with a disposition to do full justice, will be followed by an arrangement satisfactory to all parties.

The claims of our citizens may be divided into four classes:

1. For property sequestered.
2. For property condemned, regularly, under the Berlin and Milan decrees.
3. For property irregularly condemned under the same decrees, including that condemned by imperial mandate, without the intervention of any judicial tribunal.
4. For property burned or destroyed at sea; a portion of it after the decrees authorizing such destruction had been repealed.

The first class includes, in addition to other property not acted upon by the judicial tribunals, the seizures at Antwerp in 1807, at St. Sebastian in 1809-'10, in Holland in 1810, under a secret article of the treaty incorporating Holland with France. The right of the claimants to an immediate and full indemnity for all property sequestered and never condemned, cannot be plausibly contested. It was put under sequestration by an imperial decree, on suspicion that it was English property, merely to give time to ascertain whether it was English or not. That it was not English, is now well known to the Government of France. Had it been English, it must have been given up or paid for, under the fourth article of the additional articles of the treaty of the 30th May, 1814, between that power and Great Britain. By that article, the parties stipulate to release all property put under sequestration since 1792. If the property of our citizens seized at Antwerp, St. Sebastian, and in Holland, had been what it was, without the shadow of reason, alleged to be, payment would be due for it to English owners. A singular spectacle will be exhibited, if payment is denied when the motive for the seizure is shown to have been false, or should any doctrine of France place the property of a neutral in a worse situation than if it had belonged, as was suspected, to an enemy. Such doctrine

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cannot be advanced by France, unless she intends to instruct other powers, that, in all future wars in which she may be engaged with a formidable rival, it will be more prudent to be her enemy than her friend. Nor can the committee anticipate any grounds upon which a decision unfavorable to the other claims embraced in the other three enumerated classes, can be justly made, resting as they obviously do upon the immutable bases of justice and national law.

A due regard to those relations of amity that have ever united this Government with France, to the stipulations of her treaty with us, to her character for liberal justice to foreign claimants, will doubtless induce the Government of that country to adjust those claims whenever they are fairly considered.

Under the hope and expectation that attention will be given to this interesting subject by France, prior to the next session of Congress, the committee, without asking to be discharged from the further consideration of the several petitions referred to them, recommend to the House the following resolution:

*Resolved*, That the President of the United States be requested to lay before the House, at the next session, as early as the public interest will permit, the correspondence which may be held with the Government of France, prior to that time, on the subject of injuries sustained by citizens of the United States since the year 1806.

#### *Trade with Mexican Provinces.*

The following Message was received from the PRESIDENT OF THE UNITED STATES, viz:

*To the House of Representatives of the United States:*

In compliance with a resolution of the House of Representatives, of the 18th instant, requesting the President to communicate any information he may possess, in relation to the intercourse and trade now carried on between the people of the United States (and, particularly, the people of the State of Missouri) and the Mexican provinces; how and by what route that trade or intercourse is carried on; in what it consists, the distances, &c.; the nations of Indians through which it passes; their dispositions, whether pacific or otherwise; the advantages resulting, or likely to result from that trade or intercourse; I herewith transmit a communication from the Department of State, which contains all the information which has yet been collected in relation to those subjects.

JAMES MONROE.

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The said Message was read, and laid upon the table. The communication is as follows:

WASHINGTON CITY, April 27, 1824.

SIR: Permit me, through you, to communicate to his Excellency the President of the United States, the following ideas; from which, if circumstances would allow of their going into operation, much good might, perhaps, result to the young and enterprising of the West, as well as to the nation generally. I mean the interposition of the General Government, for the protection of an intercourse between the citizens of the United States and the inhabitants of the Northern and Eastern parts of Mexico. This intercourse has been, on a small scale, attempted by a few brave and enterprising

men from the State of Missouri, but with much risk of lives and property. The latter, they have frequently been robbed of by the Indians. These evils can only be prevented by means of a negotiation, to be opened by the General Government, with the Indians, through which the route would pass, from a favorable point on the Missouri River to Santa Fe. The Indians should be made responsible for depredations committed on citizens of the United States, as on citizens of the Republic of Mexico visiting the United States.

The benefits which would result from a safe intercourse between the United States and those parts of Mexico, it might be considered presumption in me to comment on. Its many important advantages will be obvious to the judgment of those much more capable of doing justice to the subject than myself. I will therefore submit it with the following few remarks:

1st. A safe intercourse between the citizens of this Government and the Northern and Eastern parts of the Mexican dominions, will awaken the inhabitants of the latter to the blessings of a republican system of Government; blessings which the American people wish all nations to enjoy, and the value of which will be more deeply impressed on the minds of strangers by an experimental knowledge of our enjoyments.

2dly. Many advantages will flow from the commerce to which the establishment of a safe intercourse will naturally lead; and many of the productions and manufactures of our country will be exchanged for silver, mules, horses, and other articles, in demand with us.

3dly. The establishment and protection of safe intercourse would not only essentially benefit the people of the two Governments, but would be attended with a beneficial result as it relates to the Indian nations, through which the communication would pass, and those bordering on them. Some of these nations yet know little of the American character. The most effectual mode of maintaining friendship with the Indians, is to impress them with a deep sense of your superiority. This, when judiciously attended to, does not require a great expense; and the saving of much blood will unquestionably result from a timely interposition on the part of the Government.

4thly. A portion of the Western people have been in the habit of hunting and trapping for a living; should the privilege be denied them of following their pursuits in the Indian country, they will seek other employments. All cannot be engaged in the Indian trade, and some will extend their enterprises into the Mexican dominions. These, if not protected by Government, they will hazard at their own risk; difficulties with the Indians will inevitably follow; and a train of mischievous consequences can alone be prevented by laying of the foundation, on the part of the General Government, of a proper understanding with them.

5thly. The city of Mexico is situated at so great a distance from the Northern and Eastern limits of the Republic, that a safe and harmonious intercourse cannot be opened and maintained without the establishment of an agency at Santa Fe, in strict subordination to the Government at Washington, and the American Minister at Mexico.

Such an agent would have much in his power towards producing and maintaining the proper friendly understanding between the American

people and the citizens of Mexico, as well as with the numerous Indian nations. This agent would be extremely useful to the Government, in keeping a constant communication of the state of affairs in that section of the country with the Government at home, as well as with the American Minister at the city of Mexico. Such an agent ought to have the charge, in a certain degree, of the Indians bordering on the Mexican Republic.

8thly. The route in contemplation would pass through a healthy country, and would be attended with many facilities, too numerous at present to detail. Those who would not have the means of visiting Mexico in a more expensive mode, could pursue this route with little comparative cost.

The establishment, the encouragement, and the protection of this intercourse will be, I have no doubt, cheerfully met on the part of the Mexican Government; and, with the means thus afforded them, the day will rapidly approach when the people of that country will become genuine, orderly, and patriotic Republicans.

Respectfully, I have the honor to be, &c.

A. McNAIR.

Hon. J. Q. ADAMS, *Secretary of State.*

#### *Report on the Address of Ninian Edwards.*

Mr. LIVINGSTON, from the committee appointed on the 19th of April ultimo, on an address or memorial of Ninian Edwards, preferring certain charges against the Secretary of the Treasury, made a report; which was read.

[The report is in great detail, covering every point presented in the "Address," and concluding with a separate answer to each of the six accusations presented. This conclusion is as follows:]

Referring to what has been said in the introduction to this report, and repeating that Mr. Edwards has not had an opportunity of supporting his charges, by his presence and testimony, the result of the facts which have appeared to the committee, thus far, in this investigation, and of their deductions from them, when applied to the recapitulation of charges, as stated at the end of the Address, is—

First. That the evidence referred to, and examined, does not support the charge of having mismanaged the public funds.

Second. That the uncurrent notes, mentioned in the second charge, appear, by evidence satisfactory to the committee, to have been received and deposited by the public receivers, at a time when they were receivable under the resolution of Congress of 1816. That, in the principal case, that of the Bank of Missouri, the bank did not make itself responsible for such notes as cash, and therefore the Secretary was bound to receive them from the bank; that, although the banks of Tombigbee and Edwardsville were liable to account for such deposits as cash, if the construction which the committee gives to their contracts be correct, yet, that both the Secretary and the banks expressed a different opinion as to the meaning of those contracts, and that the Secretary, in receiving fifteen thousand dollars from the one, and twenty thousand dollars from the other, of those banks, appears to have acted according to what he supposed to be the rights of the parties, and with a proper regard to the interest of the

United States, under the circumstances which then existed.

Third. That no intentional misstatement has been made to the House, of the amount of uncurrent bills received from the banks; although a sum of two hundred and eighty dollars of such bills was omitted through mistake.

Fourth. That, although the Secretary may have misconstrued the effect of some of the contracts with the banks to the extent before mentioned, the committee find no grounds for the charge that he has misrepresented them, inasmuch as the contracts themselves were submitted, with his report, to the House.

Fifth. That the Secretary did omit to communicate to Congress the reasons which led him to direct the deposit of public moneys in the three local banks of Chillicothe, Cincinnati, and Louisville, where the Bank of the United States had branches, but there is no reason for supposing that any concealment was intended, or that the omission was occasioned by design.

Sixth. That in some instances, papers called for by resolutions of the House, have not been communicated with other papers sent in answer to such calls, but that these omissions have happened either from accident, or from a belief that the papers so omitted were immaterial or not called for; and that there is no evidence that any document or information has been withheld from improper motives.

Having already expressed the opinion that this investigation ought not to be terminated, until the person preferring the charges shall have been examined, and regretting the circumstances which render such an examination impracticable during the present session of Congress, and thinking that Mr. Edwards may be expected at Washington within a few days, the committee feel it their duty to recommend to the House that they be required to sit after the adjournment, for the purpose of taking his examination, if an opportunity shall be presented.

Mr. LIVINGSTON moved that the report be laid on the table, and printed.

Mr. FORSYTH hoped that a copy would be sent, by order of the House, to the President of the United States.

The question was divided, and being first put on laying the report on the table, it was carried.

Mr. COOK expressed an intention to address the House, should the report be called up for consideration, and hoped it would be printed in time.

The question on printing was then put, and carried.

Mr. LIVINGSTON then offered, by direction of the committee, the following:

"*Ordered*, That the committee, to which was referred the Address of Ninian Edwards, be required to sit after the adjournment of the House, for such time as shall be necessary, in their judgment, for further examination; that any additional report which may be made by them, be filed in the office of the Clerk of the House; and that any three members of the committee be a quorum for the transaction of business."

Mr. WILLIAMS wished that the resolution should be suffered to lie on the table for one day.

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Mr. TAYLOR hoped that the House was prepared to act on the resolution without delay.

Mr. McDUFFIE moved to lay it on the table; and, the question being put, it was carried—ayes 92.

Mr. FORSYTH then moved that a copy of this report be transmitted by the Clerk of this House to the President of the United States. He observed, that the same courtesy which had dictated the former communication, when the memorial was presented, and the committee had sent for Mr. Edwards, was proper on the present occasion.

Mr. WEBSTER said, that, with great deference to the honorable gentleman from Georgia, it appeared to him that, when the resolution proposed in the report of the committee should be adopted, it would then be proper to make such communication, but not in the present stage of proceeding.

Mr. FORSYTH then moved to lay the resolution he offered on the table, till the determination of the House with respect to that reported by the committee should be known.—Agreed to.

*Western Boundary of the Territory of Arkansas.*

On motion of Mr. CONWAY, the House, in Committee of the Whole, (Mr. SHARPE in the chair,) considered the bill to fix the western boundary line of the Territory of Arkansas.

On this bill an animated debate of considerable extent arose, in which Mr. RANKIN opposed the extension of the present boundary of that Territory, as violating the provision of Indian treaties, as giving an improper size to the future State into which this Territory will soon be formed. He denied the right of the settlers to the lands they occupied, and contended that that Territory ought to afford a resting-place to the Indians from the eastern side of the Mississippi, &c.

Mr. CONWAY remonstrated with warmth against forty thousand Choctaw Indians turned in among the settlements of Arkansas, to turn out those who had subdued the wilderness, and were surrounded with improvements, the fruit of their own labor, fields, mills, cotton factories, distilleries, &c. He contended that the limits of the Territory should be removed farther to the west, to allow room for these Indians having a separate home from the whites, &c., and to give strength to Arkansas as a future frontier State.

Mr. Wood made some remarks in opposition to the bill.

Mr. CONWAY explained.

Mr. OLAY advocated the passage of the bill—represented the hardships of the circumstances of the settlers—considered the new Territories as younger daughters in the common federative family, and, as such, entitled to an indulgent policy—denied that the size of the Territory must necessarily govern the size of the future State to be formed out of it, and even if it did, he urged the policy of making Arkansas a strong frontier State. The bill only asks the Indians

to consent to remove the line farther west, and does not violate any treaty. It had received the deliberate consideration of the Senate, and he hoped it would pass this House.

Mr. RANKIN rejoined. If this extension of the limits be allowed, the whole must be received as a State, or a small section of its western part must remain (probably forever) a Territory, or else the Indians must be driven still farther west.

Mr. OLAY responded. If Louisiana, was not as large as the gentleman could wish, it was an argument rather for than against this bill. He (Mr. O.) had opposed the treaty by which Texas was ceded, and Louisiana consequently reduced in extent. If Louisiana was comparatively weak, the greater need that the adjoining frontier State should be a strong one.

The debate was further continued by Mr. WOOD, Mr. F. JOHNSON, and Mr. ISAACS, when the committee rose, and reported the bill to the House; and, the question being put on its final passage, it was decided in the negative—ayes 52, noes 56.

And then the House adjourned.

WEDNESDAY, May 26.

*Western Boundary of the Territory of Arkansas.*

A motion was made, by Mr. ROSS, that the House do reconsider the vote, taken yesterday, on the question, "Shall the bill from the Senate, entitled 'An act to fix the western boundary line of the Territory of Arkansas, and for other purposes,' be read a third time?" and on the question, "Will the House reconsider the said vote?" it passed in the affirmative.

The question was again put, "Shall the bill be read a third time?" and passed in the affirmative. To-day was then assigned for the third reading of the said bill. The bill was, accordingly, read a third time. And, on the question, "Shall it pass?" it passed in the affirmative—yeas 70, nays 58, as follows:

YEAS.—Messrs. Abbot, Adams, Alexander of Virginia, Alexander of Tennessee, J. S. Barbour, Breck, Brent, Buckner, Cocke, Condict, Cook, Craig, Cushman, Findlay, Floyd, Foot of Connecticut, Forward, Harris, Henry, Holcombe, Houston, Ingham, Isaacs, Jenkins, Jennings, F. Johnson, Kent, Kidder, Kremer, Lawrence, Leftwich, Litchfield, Little, Livermore, Livingston, McArthur, McDuffie, McKim, Martindale, Metcalfe, Mitchell of Pennsylvania, Mitchell of Maryland, Moore of Kentucky, Neale, Patterson of Pennsylvania, Patterson of Ohio, Plumer of Pennsylvania, Reynolds, Richards, Rich, Rose, Ross, Scott, Sloane, Standefer, A. Stevenson, J. Stephenson, Stewart, Strong, Swan, Taliaferro, Tattall, Taylor, Test, Udree, Van Wyck, Warfield, Williams of North Carolina, James Wilson, and Henry Wilson.

NAYS.—Messrs. Bartlett, Beecher, Blair, Cambreleng, Campbell of South Carolina, Cary, Cobb, Crafts, Culpeper, Cuthbert, Durfee, Dwinell, Dwight, Eddy, Foote of New York, Forsyth, Frost, Gatlin, Gist, Gurley, Hall, Hamilton, Harvey, Hayden, Hobart, Hogeboom, Hooks, Lee, Lincoln, McCoy, McKee, McLane of Delaware, Matlack, Matson, Moore of Alabama, Nelson, Newton, Plumer of New Hamp-



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shire, Poinsett, Rankin, Reed, Sharpe, Alexander Smyth, Spaight, Thompson of Georgia, Thompson of Kentucky, Tomlinson, Tucker of Virginia, Tucker of South Carolina, Vance of North Carolina, Vance of Ohio, Webster, Whipple, Whitman, Williams of Virginia, Wilson of South Carolina, Wood, and Wright.

*Case of Ninian Edwards.*

Mr. LIVINGSTON moved for the consideration of the resolution reported yesterday by the Committee of Investigation in the case of Ninian Edwards. Carried—ayes 88, noes 26.

On motion of Mr. LIVINGSTON, the resolve was amended so as to direct that the Clerk cause the final report of the committee to be printed, and transmit a copy to each member of the House.

The question then recurring on the resolution as amended—

Farther debate took place. In the course of it, Mr. A. SMYTH moved to lay the resolve on the table; which motion was negatived—ayes 49, noes 58.

The question being put on the resolution as amended, it was decided in the affirmative—ayes 74.

So the resolve was agreed to.

*Claim of Beaumarchais.*

Mr. McDUFFIE offered the following resolution:

“Resolved, That the President of the United States be requested to avail himself of all the means in his power, to ascertain whether any farther evidence can be obtained in relation to the claim of the heirs of Baron de Beaumarchais; and that, if any such evidence shall be obtained, that he communicate the same to this House, at an early period in the next session.”

Mr. McDUFFIE stated the reasons in favor of the above resolution; the principal of which was, a wish to show the French Government that this country is disposed to do justice in the case of the Beaumarchais claim.

Mr. FORSYTH stated that it formed a part of the instructions of our Minister to France, to negotiate on all just claims of citizens of the two nations against each other's Government, which included this case, and that this proposition was therefore unnecessary.

Mr. McDUFFIE thought, that, though this was true, yet it was expedient to adopt the resolution, to prevent mistaken impressions, which might be produced by the late vote of this House on that claim.

THURSDAY, May 27.

*Case of Ninian Edwards.*

Mr. TAYLOR then rose, and said, that it had yesterday been decided that three members of the Committee of Investigation, in the case of Mr. Ninian Edwards, should not be a quorum of that committee. He had understood that one of the members of that committee had left the United States, and that another was gone home

to his residence in Alabama. It was very desirable that the committee should be filled up; and, with a view to that object, he moved that two members be added to the committee, to supply the place of the two members absent?

Mr. TAYLOR moved that the Clerk, on the order of the chairman of the committee, pay witnesses who may attend the Committee of Investigation, the usual allowance per diem for their attendance. Agreed to.

Mr. TAYLOR moved the following:

“That a committee be appointed on the part of this House, jointly with such committee as may be appointed on the part of the Senate, to wait on the President of the United States, and notify him that unless he may have other communications to make to the two Houses of Congress, they are ready to adjourn.”

After a short time,

Mr. TAYLOR, from the Joint Committee, appointed to wait on the President, reported that they had performed that duty, and that the President had informed them that he had no farther communication to make to Congress.

*Ordered,* That a message be sent to the Senate to inform them that this House, having completed the business before them, are ready to close the present session of Congress by an adjournment on their part, and that the Clerk go with the said message.

On motion of Mr. FOOT, of Connecticut, the House was then adjourned by the SPEAKER till the first Monday of December next.

REPORT OF THE COMMITTEE OF INVESTIGATION.

The select committee, (of the House of Representatives,) to whom was referred the memorial, or address, of Ninian Edwards, having, in obedience to the resolution of the House of Representatives, of the 26th of May, continued to hold its sittings, after the adjournment of the House, until the 21st day of June, have agreed on the following report:

[The report shows that the whole case had been gone over again in the presence of Mr. Edwards, and a full hearing had of all that his testimony presented, or that he himself chose to submit in writing; and then concludes with the unanimous reiteration of the point arrived at in the first report. The following is this conclusion:]

The committee do not deem it necessary to extend their report, by protracted observations on the various parts of the evidence, as the whole is submitted to the House. They content themselves with saying, that, in their opinion, nothing has been proved to impeach the integrity of the Secretary, or to bring into doubt the general correctness and ability of his administration of the public finances. To this point, as the main object of the inquiry, the chief attention of the committee has been directed; and they have come to the result, which has now been stated, with the unanimous concurrence of the members present. Other points there

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are, of less importance, but which may, nevertheless, be supposed not to have escaped consideration by the committee. These, however, under all the circumstances, they have thought it proper to leave, without observation, in the light in which they are placed by the evidence.

## EVIDENCE.

[The committee reported the whole of the testimony taken, among the rest, that of Senator NOBLE of Indiana; of which the following is a part:]

Q. Have you had any conversation with Governor Edwards concerning Mr. Crawford's management of the Western banks, and concerning his authorship of the A. B. letters?

A. I have; and it was introduced by himself.

Q. State that conversation, with the time and circumstances.

A. The precise day I cannot recollect; it was pending his nomination made by the President of the United States to the Senate, as Minister to Mexico; and it was after the 21st or 22d of February last. I make this statement from the fact, that on the 21st or 22d of February, I went to Mrs. Queen's to board, where Governor Edwards resided, and this conversation was after I went there. He stated that he was about to be attacked in the Senate of the United States for the purpose of defeating his nomination; that party and political spirit was now high: that he understood that charges would be exhibited against him, and that it had been so declared in the Senate Chamber. I remarked to Governor Edwards that he well knew, according to the rules of that body, while on Executive business, secrecy was required; that I was not at liberty to mention any occurrence, or the remark of a single member, excepting so far as related to myself; that I was not governed by party or political feelings or motives; that I adhered to the expression made use of by Jefferson—and the only inquiry with me was, is he capable, and is he honest? Governor Edwards then remarked, that, although secrecy was required in that body, yet he was informed almost every day of the transactions and remarks of individuals when his nomination was called up; and he added, "Noble, I shall not forget you." I then replied, that I did not understand his meaning. He said it was unimportant—he was satisfied I was not governed by the party feelings which were then prevailing. It was on the day, in the evening of which this conversation took place, that I had moved to take up his nomination in the Senate. This must have been his meaning, when he said he would not forget me; for he explained it the next day, and said he had heard that I had done so. Mr. E. farther remarked, that he knew me to be the decisive friend of William H. Crawford; and, said he, I am considered as being his bitter enemy—and I am charged with being the author of the numbers signed A. B.; but, (raising his hand,) I pledge you my honor, I am not the author, nor do I know who the author was. Crawford and I, said Mr. Edwards, have had a little difference, but I have always considered him a high-minded, honorable and vigilant officer of the Government; he has been abused about the Western banks and the unavailable funds; (leaning forward and extending his hand) he added, now don't it, you know we both live in States where there are many poor debtors to the Government for lands, together with a derang-

ed currency. The notes on various banks being depreciated, after the effect and operation of the war in that portion of the Union, and the banks, by attempting to call in their paper, having exhausted their specie, the notes that were then in circulation became of little or no value. Many men of influence in that country, said he, have united to induce the Secretary of the Treasury to select certain banks as banks of deposit, and to take the notes of certain banks in payment for public lands. Had he not done so, (meaning Mr. Crawford,) many of our inhabitants would have been turned out of doors, and lost their lands; and the people of that country would have had as universal disgust against Mr. Crawford; and I will venture to say, said Mr. Edwards, notwithstanding I am considered his enemy, that no man in this Government could have conducted the fiscal and financial concerns of the Government with more integrity and propriety than Mr. Crawford did. I farther remarked to Governor Edwards, in speaking of his nomination, that, inasmuch as he was nominated by the President, unless some charge was brought against him, I had already evinced in the Senate my disposition to vote for the confirmation of his nomination, without any previous consultation with him; but added, if I had the power of making the nomination, I would not have nominated him; and, as an evidence of it, I had written a letter to Mr. Monroe, urging the nomination of William Henry Harrison, and with that letter I had enclosed the unanimous recommendation of the members of the Legislature of Indiana in favor of General Harrison.

[The following extracts from the testimony of three other witnesses are also given:]

*Charles H. W. Wharton sworn, on the part of Mr. Crawford.*

Question by Mr. Forsyth. Have you ever had a conversation with Mr. Edwards about the authorship of the A. B. publications? If yes, relate it.

Answer. Yes. I have had a conversation with him on that subject in December or January last, at his lodgings, at Mrs. Queen's. Mr. E. said he was not the author of the A. B. plot, that he did not know any thing about it.

Q. In what manner was this denial made, and in what words, so far as you can recollect?

A. The manner appeared to be solemn; the expressions were—"He would be damned if he knew any thing about that damned A. B. plot."

Q. How came he to say any thing about the A. B. plot?

A. I called upon Mr. Edwards for the purpose of procuring recommendations to the different Secretaries of the Departments with a view to obtaining for myself a clerkship. He stated that he was intimately acquainted with all of them, and could give letters to all of them, except Mr. Crawford, and a letter to him would do no good, for, (to use his own expressions,) that he and Mr. Crawford "did not set horses together;" that Mr. Crawford was under a belief that he was the author of the damned A. B. plot, the authorship of which he disavowed; and he concluded by saying that he considered Mr. Crawford a very clever and honorable man.

Q. by Mr. Cook. Are you certain that Mr. Edwards, in speaking of an A. B. plot, did not say that he knew nothing of any plot?

A. I have correctly stated the conversation as it occurred.

*Jeremiah Elkins sworn, on the part of Mr. Crawford.*

Q. Had you a conversation with Mr. Edwards about the A. B. publications?

A. I have heard him allude to those publications, and mention his being charged with the authorship of them.

Q. State what took place.

A. I think it was an article in the *Richmond Enquirer* which led to the remark I heard him make, in which article it was stated that "Mr. Edwards, of A. B. plot memory," or words to that effect, had been nominated by the President as Minister to Mexico. Mr. Edwards observed that he was not the author of those publications; or, as I think the expression was, that he was no more the author than the editor of the *Enquirer* himself.

*William W. Seaton sworn, on the part of Mr. Crawford.*

Question by Mr. Forsyth. Did you ever have a conversation with Mr. Edwards, relative to the authorship of the A. B. publications?

Answer. Mr. Edwards spoke of those papers to me, incidentally. He came to our office to have, as he said, a free and frank conversation. It was the first time he had been there, to my knowledge, for a year. It was during the pendency of his nomination before the Senate as Minister to Mexico, and some time before Mr. Crawford's report was made to Congress. He wished to know, he

said, if we would publish his defence. I asked him what defence—a defence against whom? He replied, that he expected to be attacked, and whenever he turned upon his enemies, he generally got the better of them, (or words to that effect.) He further said, (and this I remember distinctly, for he twice or thrice repeated it,) that when he commenced, he never stopped at the line of just retribution. I answered him, that, if he was attacked in our paper, he should have the free use of it to defend himself; that if he was attacked anywhere else, he should have the same rights extended to him as were extended to all other citizens; but he could have no positive promise of publication, until we had read the matter which he wished published. Passing then from that subject, Governor Edwards said he knew that we had thought him for some time hostile to us, on account of that foolish business of last session, (or that A. B. affair of last session—I do not recollect which phrase he used,) but he had nothing to do with it. Mr. Gales was present during the greater part, if not the whole of this conversation. It was on the authority of this conversation alone, that we expressed in the paper our belief that Mr. Edwards was not the author of the A. B. publications.

[In consequence of these two reports of the Committee of Investigation, and the accompanying testimony, Mr. Edwards was required by President Monroe to resign his appointment of Minister to Mexico, and also to refund the outfit and quarter's salary which he had received.]

DECEMBER, 1824.]

*President's Message.*

[SENATE.]

## EIGHTEENTH CONGRESS.—SECOND SESSION.

BEGUN AT THE CITY OF WASHINGTON, DECEMBER 6, 1824.

## PROCEEDINGS IN THE SENATE.

MONDAY, December 6.

This being the day fixed for the opening of the Second Session of the Eighteenth Congress, Mr. GAILLARD, president pro tempore, in the absence of the Vice President, took the chair; and the roll being called over, it appeared that a quorum of members was present, and a committee was appointed, jointly with such committee as the House of Representatives might appoint, to wait on the President of the United States, and inform him that the two Houses were assembled, and ready to receive any communication he might have to make, &c.

TUESDAY, December 7.

On motion of Mr. BARBOUR, the Senate concurred in the resolution from the other House, respecting the reception of General LAFAYETTE.

A written Message was received from the PRESIDENT OF THE UNITED STATES, by Mr. EVERETT, as follows:

*President's Message.*

*Fellow-Citizens of the Senate,  
and of the House of Representatives:*

The view which I have now to present to you, of our affairs, Foreign and Domestic, realizes the most sanguine anticipations which have been entertained of the public prosperity. If we look to the whole, our growth, as a Nation, continues to be rapid, beyond example; if to the States which compose it, the same gratifying spectacle is exhibited. Our expansion over the vast territory within our limits, has been great, without indicating any decline in those sections from which the emigration has been most conspicuous. We have daily gained strength by a native population in every quarter—a population devoted to our happy system of Government, and cherishing the bond of union with fraternal affection. Experience has already shown, that the difference of climate, and of industry, proceeding from that cause, inseparable from such vast domains, and which, under other systems, might have a repulsive tendency, cannot fail to produce, with

us, under wise regulations, the opposite effect. What one portion wants, the other may supply, and this will be most sensibly felt by the parts most distant from each other, forming, thereby, a domestic market, and an active intercourse between the extremes and throughout every portion of our Union. Thus, by a happy distribution of power between the National and State Governments, governments which rest exclusively on the sovereignty of the people, and are fully adequate to the great purposes for which they were respectively instituted, causes which might otherwise lead to dismemberment, operate powerfully to draw us closer together. In every other circumstance, a correct view of the actual state of our Union must be equally gratifying to our constituents. Our relations with foreign powers are of a friendly character, although certain interesting differences remain unsettled with some. Our revenue, under the mild system of impost and tonnage, continues to be adequate to all the purposes of the Government. Our agriculture, commerce, manufactures, and navigation, flourish. Our fortifications are advancing in the degree authorized by existing appropriations, to maturity, and due progress is made in the augmentation of the navy, to the limit prescribed for it by law. For these blessings, we owe to Almighty God, from whom we derive them, and with profound reverence, our most grateful and unceasing acknowledgments.

In adverting to our relations with foreign powers, which are always an object of the highest importance, I have to remark, that, of the subjects which have been brought into discussion with them during the present administration, some have been satisfactorily terminated; others have been suspended, to be resumed hereafter, under circumstances more favorable to success; and others are still in negotiation, with the hope that they may be adjusted, with mutual accommodation to the interests, and to the satisfaction, of the respective parties. It has been the invariable object of this Government, to cherish the most friendly relations with every power, and on principles and conditions which might make them permanent. A systematic effort has been made to place our commerce with each power on a footing of perfect reciprocity; to settle with each, in a spirit

of candor and liberality, all existing differences, and to anticipate and remove, so far as it might be practicable, all causes of future variance.

It having been stipulated by the seventh article of the convention of navigation and commerce, which was concluded on the twenty-fourth of June, one thousand eight hundred and twenty-two, between the United States and France, that the said convention should continue in force for two years, from the first of October of that year, and for an indefinite term afterwards, unless one of the parties should declare its intention to renounce it, in which event it should cease to operate at the end of six months from such declaration; and no such intention having been announced, the convention having been found advantageous to both parties, it has since remained, and still remains, in force. At the time when that convention was concluded, many interesting subjects were left unsettled, and particularly our claim to indemnity for spoils which were committed on our commerce in the late wars. For these interests and claims, it was in the contemplation of the parties, to make provision at a subsequent day, by a more comprehensive and definitive treaty. The object has been duly attended to since by the Executive; but, as yet, it has not been accomplished. It is hoped that a favorable opportunity will present itself for opening a negotiation, which may embrace and arrange all existing differences, and every other concern in which they have a common interest, upon the accession of the present king of France, an event which has occurred since the close of the last session of Congress.

With Great Britain our commercial intercourse rests on the same footing that it did at the last session. By the convention of one thousand eight hundred and fifteen, the commerce between the United States and the British dominions in Europe and the East Indies, was arranged on a principle of reciprocity. That convention was confirmed and continued in force, with slight exceptions, by a subsequent treaty, for the term of ten years, from the twentieth of October, one thousand eight hundred and eighteen, the date of the latter. The trade with the British colonies in the West Indies, has not, as yet, been arranged by treaty, or otherwise, to our satisfaction. An approach to that result has been made by legislative acts, whereby many serious impediments, which had been raised by the parties in defence of their respective claims, were removed. An earnest desire exists, and has been manifested on the part of this Government, to place the commerce with the colonies, likewise, on a footing of reciprocal advantage; and it is hoped that the British Government, seeing the justice of the proposal, and its importance to the colonies, will, ere long, accede to it.

The Commissioners who were appointed for the adjustment of the boundary, between the territories of the United States and those of Great Britain, specified in the fifth article of the Treaty of Ghent, having disagreed in their decision, and both governments having agreed to establish that boundary by amicable negotiation between them, it is hoped that it may be satisfactorily adjusted in that mode. The boundary specified by the sixth article has been established by the decision of the commissioners. From the progress made in that provided for by the seventh, according to a report recently received, there is good cause to presume that it will be settled in the course of the ensuing year.

It is a cause of serious regret that no arrangement has yet been finally concluded between the two Governments, to secure, by joint co-operation, the suppression of the slave trade. It was the object of the British Government, in the early stages of the negotiation, to adopt a plan for the suppression, which should include the concession of the mutual right of search by the ships of war of each party, of the vessels of the other, for suspected offenders. This was objected to by this government on the principle, that, as the right of search was a right of war of a belligerent towards a neutral power, it might have an ill effect to extend it by treaty to an offence, which had been made comparatively mild to a time of peace. Anxious, however, for the suppression of this trade, it was thought advisable, in compliance with a resolution of the House of Representatives, founded on an act of Congress, to propose to the British Government an expedient which should be free from that objection, and more effectual for the object, by making it piratical. In that mode the enormity of the crime would place the offenders out of the protection of their Government, and involve no question of search, or other question between the parties, touching their respective rights. It was believed, also, that it would completely suppress the trade in the vessels of both parties, and by their respective citizens and subjects in those of other powers, with whom it was hoped that the odium which would thereby be attached to it, would produce a corresponding arrangement, and, by means thereof, its entire extirpation forever. A convention to this effect was concluded and signed in London on the 18th day of March, by Plenipotentiaries duly authorized by both Governments, to the ratification of which certain obstacles have arisen which are not yet entirely removed. The difference between the parties still remaining, has been reduced to a point, not of sufficient magnitude, as is presumed, to be permitted to defeat an object so near to the heart of both nations, and so desirable to the friends of humanity throughout the world. As objections, however, to the principle recommended by the House of Representatives, or at least to the consequences inseparable from it, and which are understood to apply to the law, have been raised, which may deserve a reconsideration of the whole subject, I have thought it proper to suspend the conclusion of a new convention until the definitive sentiments of Congress may be ascertained. The documents relating to the negotiation, are, with that intent, submitted to your consideration.

Our commerce with Sweden has been placed on a footing of perfect reciprocity by treaty, and, with Russia, the Netherlands, Prussia, the free Hanseatic cities, the Dukedom of Oldenburgh, and Sardinia, by internal regulations on each side, founded on mutual agreement between the respective Governments.

The principles upon which the commercial policy of the United States is founded, are to be traced to an early period. They are essentially connected with those upon which their independence was declared, and owe their origin to the enlightened men who took the lead in our affairs at that important epoch. They are developed in their first treaty of commerce with France of sixth February, one thousand seven hundred and seventy-eight, and by a formal commission, which was instituted immediately after the conclusion of their Revolutionary struggle, for the

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*President's Message.*

[SENATE.]

purpose of negotiating treaties of commerce with every European power. The first treaty of the United States with Prussia, which was negotiated by that commission, affords a signal illustration of those principles. The act of Congress of the third March, one thousand eight hundred and fifteen, adopted immediately after the return of a general peace, was a new overture to foreign nations to establish our commercial relations with them on the basis of free and equal reciprocity. That principle has pervaded all the acts of Congress, and all the negotiations of the Executive on the subject since.

A convention for the settlement of important questions in relation to the northwest coast of this continent, and its adjoining seas, was concluded and signed at St. Petersburg on the fifth day of April last, by the Minister Plenipotentiary of the United States, and Plenipotentiaries of the Imperial Government of Russia. It will immediately be laid before the Senate for the exercise of the constitutional authority of that body, with reference to its ratification. It is proper to add, that the manner in which this negotiation was invited and conducted on the part of the Emperor, has been very satisfactory.

The great and extraordinary changes which have happened in the Governments of Spain and Portugal, within the last two years, without seriously affecting the friendly relations which, under all of them, have been maintained with those powers by the United States, have been obstacles to the adjustment of the particular subjects of discussion which have arisen with each. A resolution of the Senate, adopted at their last session, called for information as to the effect produced upon our relations with Spain, by the recognition, on the part of the United States, of the Independent South American Governments. The papers containing that information are now communicated to Congress.

A Chargé d'Affaires has been received from the Independent Government of Brazil. That country, heretofore a colonial possession of Portugal, had, some years since, been proclaimed by the Sovereign of Portugal himself, an independent kingdom. Since his return to Lisbon a revolution in Brazil has established a new Government there, with an imperial title, at the head of which is placed the prince in whom the regency had been vested by the king, at the time of his departure. There is reason to expect that, by amicable negotiation, the independence of Brazil will, ere long, be recognized by Portugal herself.

With the remaining powers of Europe, with those on the coast of Barbary, and with all the new South American States, our relations are of a friendly character. We have Ministers Plenipotentiary residing with the Republics of Colombia and Chili, and have received Ministers, of the same rank, from Colombia, Guatemala, Buenos Ayres, and Mexico. Our commercial relations with all those States are mutually beneficial and increasing. With the Republic of Colombia a treaty of commerce has been formed, of which a copy is received, and the original daily expected. A negotiation for a like treaty would have been commenced with Buenos Ayres, had it not been prevented by the indisposition and lamented decease of Mr. Rodney, our Minister there, and to whose memory the most respectful attention has been shown by the Government of that Republic. An advantageous alteration in our treaty with Tunis has been obtained by our consular

agent residing there, the official document of which, when received, will be laid before the Senate.

The attention of the Government has been drawn with great solicitude to other subjects, and particularly to that relating to a state of maritime war, involving the relative rights of neutral and belligerent in such wars. Most of the difficulties which we have experienced, and of the losses which we have sustained, since the establishment of our independence, have proceeded from the unsettled state of those rights, and the extent to which the belligerent claim has been carried against the neutral party. It is impossible to look back on the occurrences of the late wars in Europe, and to behold the disregard which was paid to our rights as a neutral power, and the waste which was made of our commerce by the parties to those wars, by various acts of their respective Governments, and under the pretext, by each, that the other had set the example, without great mortification, and a fixed purpose never to submit to the like in future. An attempt to remove those causes of possible variance by friendly negotiation, and on just principles, which should be applicable to all parties, could, it was presumed, be viewed by none other than as a proof of an earnest desire to preserve those relations with every power. In the late war between France and Spain, a crisis occurred, in which it seemed probable that all the controvertible principles, involved in such wars, might be brought into discussion, and settled to the satisfaction of all parties. Propositions, having this object in view, have been made to the Governments of Great Britain, France, Russia, and of other powers, which have been received in a friendly manner by all, but as yet no treaty has been formed with either for its accomplishment. The policy will, it is presumed, be persevered in, and in the hope that it may be successful.

It will always be recollected that with one of the parties to those wars, and from whom we received those injuries, we sought redress by war. From the other, by whose then reigning Government our vessels were seized in port as well as at sea, and their cargoes confiscated, indemnity has been expected, but has not yet been rendered. It was under the influence of the latter that our vessels were likewise seized by the Governments of Spain, Holland, Denmark, Sweden, and Naples, and from whom indemnity has been claimed and is still expected, with the exception of Spain, by whom it has been rendered. With both parties we had abundant cause of war, but we had no alternative but to resist that which was most powerful at sea, and pressed us nearest at home. With this, all differences were settled by a treaty founded on conditions fair and honorable to both, and which has been so far executed with perfect good faith. It has been earnestly hoped that the other would, of its own accord, and from a sentiment of justice and conciliation, make to our citizens the indemnity to which they are entitled, and thereby remove from our relations any just cause of discontent on our side.

It is estimated that the receipts into the Treasury during the current year, exclusive of loans, will exceed eighteen million five hundred thousand dollars, which, with the sum remaining in the Treasury at the end of the last year, amounting to nine million, four hundred and sixty-three thousand, nine hundred and twenty-two dollars, eighty-one cents, will, after discharging the current disbursements of

the year, the interest on the public debt, and eleven million six hundred and thirty-three thousand dollars fifty-two cents of the principal, leave a balance of more than three million dollars in the Treasury on the first day of January next.

A larger amount of the debt contracted during the late war, bearing an interest of six per cent., becoming redeemable in the course of the ensuing year, than could be discharged by the ordinary revenue, the act of the twenty-sixth of May authorized a loan of five million dollars, at four and a half per cent., to meet the same. By this arrangement an annual saving will accrue to the public of seventy-five thousand dollars.

Under the act of the twenty-fourth of May last, a loan of five million dollars was authorized, in order to meet the awards, under the Florida Treaty, which was negotiated at par, with the Bank of the United States, at four and a half per cent., the limit of interest fixed by the act. By this provision the claims of our citizens, who had sustained so great a loss by spoliation, and from whom indemnity had been so long withheld, were promptly paid. For these advances the public will be amply repaid, at no distant day, by the sale of the lands in Florida. Of the great advantages resulting from the acquisition of the Territory in other respects, too high an estimate cannot be formed.

It is estimated that the receipts into the Treasury, during the year one thousand eight hundred and twenty-five, will be sufficient to meet the disbursements of the year, including the sum of ten million dollars, which is annually appropriated by the act, constituting the Sinking Fund, to the payment of the principal and interest of the public debt.

The whole amount of the public debt on the first of January next, may be estimated at eighty-six million dollars, inclusive of two million five hundred thousand dollars of the loan authorized by the act of the twenty-sixth of May last. In this estimate is included a stock of seven million dollars, issued for the purchase of that amount of the capital stock of the Bank of the United States; and which, as the stock of the Bank, still held by the Government, will at least be fully equal to its reimbursement, ought not to be considered as constituting a part of the public debt. Estimating, then, the whole amount of the public debt at seventy-nine million dollars, and regarding the annual receipts and expenditures of the Government, a well-founded hope may be entertained, that, should no unexpected event occur, the whole of the public debt may be discharged in the course of ten years, and the Government be left at liberty thereafter to apply such portion of the revenue as may not be necessary for current expenses, to such other objects as may be most conducive to the public security and welfare. That the sum applicable to these objects will be very considerable may be fairly concluded, when it is recollected that a large amount of the public revenue has been applied, since the late war, to the construction of the public buildings in this city; to the erection of fortifications along the coast, and of arsenals in different parts of the Union; to the augmentation of the navy; to the extinguishment of the Indian title to large tracts of fertile territory; to the acquisition of Florida; to pensions to Revolutionary officers and soldiers, and to invalids of the late war. On many of these objects the expense will annually diminish, and cease at no distant pe-

riod on most or all. On the first of January, one thousand eight hundred and seventeen, the public debt amounted to one hundred and twenty-three million, four hundred and ninety-one thousand, nine hundred and sixty-five dollars and sixteen cents; and notwithstanding the large sums which have been applied to these objects, it has been reduced since that period, thirty-seven million, four hundred and forty-six thousand, nine hundred and sixty-one dollars and seventy eight cents. The last portion of the public debt will be redeemable on the first of January, one thousand eight hundred and thirty-five; and while there is the best reason to believe that the resources of the Government will be continually adequate to such portions of it as may become due in the interval, it is recommended to Congress to seize every opportunity which may present itself to reduce the rate of interest on every part thereof. The high state of the public credit, and the great abundance of money, are at this time very favorable to such a result. It must be very gratifying to our fellow-citizens to witness this flourishing state of the public finances, when it is recollected that no burthen whatever has been imposed upon them.

The Military Establishment, in all its branches, in the performance of the various duties assigned to each, justifies the favorable view which was presented, of the efficiency of its organization, at the last session. All the appropriations have been regularly applied to the objects intended by Congress; and, so far as the disbursements have been made, the accounts have been rendered and settled, without loss to the public. The condition of the Army itself, as relates to the officers and men, in science and discipline, is highly respectable. The Military Academy, on which the Army essentially rests, and to which it is much indebted for this state of improvement, has attained, in comparison with any other institution of a like kind, a high degree of perfection. Experience, however, has shown, that the dispersed condition of the Corps of Artillery is unfavorable to the discipline of that important branch of the Military Establishment. To remedy this inconvenience, eleven companies have been assembled at the fortification erected at Old Point Comfort, as a school for Artillery instruction, with intention, as they shall be perfected in the various duties of that service, to order them to other posts, and to supply their places with other companies, for instruction in like manner. In this mode, a complete knowledge of the science and duties of this arm, will be extended throughout the whole Corps of Artillery. But, to carry this object fully into effect, will require the aid of Congress; to obtain which, the subject is now submitted to your consideration.

Of the progress which has been made in the construction of Fortifications, for the permanent defence of our maritime frontier, according to the plan decided on, and to the extent of the existing appropriations, the Report of the Secretary of War, which is herewith communicated, will give a detailed account. Their final completion cannot fail to give great additional security to that frontier, and to diminish, proportionably, the expense of defending it in the event of war.

The provisions in the several acts of Congress, of the last session, for the improvement of the navigation of the Mississippi and the Ohio, of the Harbor of Presqu'isle, on Lake Erie, and the repair of the

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*President's Message.*

[SENATE.]

Plymouth Beach, are in a course of regular execution; and, there is reason to believe, that the appropriation, in each instance, will be adequate to the object. To carry these improvements fully into effect, the superintendence of them has been assigned to officers of the Corps of Engineers.

Under the act of 30th April last, authorizing the President to cause a survey to be made, with the necessary plans and estimates, of such roads and canals, as he might deem of national importance, in a commercial or military point of view, or for the transportation of the mail, a Board has been instituted, consisting of two distinguished officers of the Corps of Engineers, and a distinguished Civil Engineer, with assistants, who have been actively employed in carrying into effect the object of the act. They have carefully examined the route between the Potomac and the Ohio Rivers; between the latter and Lake Erie: between the Alleghany and the Susquehanna; and the routes between the Delaware and the Rariton, Barnstable and Buzzard's Bay, and between Boston Harbor and Narraganset Bay. Such portion of the corps of Topographical Engineers as could be spared from the survey of the coast, has been employed in surveying the very important route between the Potomac and the Ohio. Considerable progress has been made in it, but the survey cannot be completed until the next season. It is gratifying to add, from the view already taken, that there is good cause to believe, that this great national object may be fully accomplished.

It is contemplated to commence early in the next season, the execution of the other branch of the act, that which relates to roads, and with the survey of a route from this city, through the Southern States, to New Orleans, the importance of which cannot be too highly estimated. All the officers of both the corps of Engineers, who could be spared from other services, have been employed in exploring and surveying the routes for canals. To digest a plan for both objects, for the great purposes specified, will require a thorough knowledge of every part of our Union, and of the relation of each part to the others, and of all to the seat of the General Government. For such a digest it will be necessary that the information be full, minute, and precise. With a view to these important objects, I submit to the consideration of Congress the propriety of enlarging both the corps of Engineers, the military and topographical. It need scarcely be remarked that the more extensively these corps are engaged in the improvement of their country, in the execution of the powers of Congress, and in aid of the States in such improvements as lie beyond that limit, when such aid is desired, the happier the effect will be in many views of which the subject is susceptible. By profiting of their science, the work will always be well executed; and by giving to the officers such employment, our Union will derive all the advantage in peace as well as in war, from their talents and services, which they can afford. In this mode, also, the military will be incorporated with the civil, and unfounded and injurious distinctions and prejudices, of every kind, be done away. To the corps themselves, this service cannot fail to be equally useful, since, by the knowledge they would thus acquire, they would be eminently better qualified, in the event of war, for the great purposes for which they were instituted.

Our relations with the Indian tribes within our limits, have not been materially changed during the

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year. The hostile disposition evinced by certain tribes on the Missouri during the last year, still continues and has extended, in some degree, to those on the Upper Mississippi and the upper Lakes. Several parties of our citizens have been plundered and murdered by those tribes. In order to establish relations of friendship with them, Congress, at the last session, made an appropriation for treaties with them, and for the employment of a suitable military escort to accompany and attend the Commissioners at the places appointed for the negotiations. This object has not been effected. The season was too far advanced when the appropriation was made, and the distance too great to permit it, but measures have been taken, and all the preparations will be completed, to accomplish it at an early period in the next season.

Believing that the hostility of the tribes, particularly on the upper Mississippi, and the Lakes, is in no small degree owing to the wars which are carried on between the tribes residing in that quarter, measures have been taken to bring about a general peace among them, which, if successful, will not only tend to the security of our citizens, but be of great advantage to the Indians themselves.

With the exception of the tribes referred to, our relations with all the others are on the same friendly footing, and it affords me great satisfaction to add, that they are making steady advances in civilization, and the improvement of their condition. Many of the tribes have already made great progress in the arts of civilized life. This desirable result has been brought about by the humane and persevering policy of the Government, and particularly by means of the appropriation for the civilization of the Indians. There have been established, under the provisions of this act, thirty-two schools, containing nine hundred and sixteen scholars, who are well instructed in several branches of literature, and likewise in agriculture, and the ordinary arts of life.

Under the appropriation to authorize treaties with the Creeks, and Quapaw Indians, Commissioners have been appointed, and negotiations are now pending, but the result is not yet known.

For more full information respecting the principle which has been adopted for carrying into effect the act of Congress authorizing surveys, with plans and estimates, for canals and roads, and on every other branch of duty incident to the Department of War, I refer you to the Report of the Secretary.

The squadron in the Mediterranean has been maintained in the extent which was proposed in the Report of the Secretary of the Navy of the last year, and has afforded to our commerce the necessary protection in that sea. Apprehending, however, that the unfriendly relations which have existed between Algiers and some of the powers of Europe, might be extended to us, it has been thought expedient to augment the force there, and, in consequence, the "North Carolina," a ship of the line, has been prepared, and will sail in a few days to join it.

The force employed in the Gulf of Mexico, and in the neighboring seas, for the suppression of piracy, has likewise been preserved essentially in the state in which it was during the last year. A persevering effort has been made for the accomplishment of that object, and much protection has thereby been afforded to our commerce, but still the practice is far from being suppressed. From



every view which has been taken of the subject, it is thought that it will be necessary rather to augment than to diminish our force in that quarter. There is reason to believe that the piracies now complained of, are committed by bands of robbers who inhabit the land, and who, by preserving good intelligence with the towns, and seizing favorable opportunities, rush forth and fall on unprotected merchant vessels, of which they make an easy prey. The pillage thus taken, they carry to their lurking places, and dispose of afterwards, at prices tending to seduce the neighboring population. This combination is understood to be of great extent; and is the more to be deprecated, because the crime of piracy is often attended with the murder of the crews, these robbers knowing, if any survived, their lurking places would be exposed, and they be caught and punished. That this atrocious practice should be carried to such extent, is cause of equal surprise and regret. It is presumed that it must be attributed to the relaxed and feeble state of the local Governments, since it is not doubted, from the high character of the Governor of Cuba, who is well known and much respected here, that if he had the power, he would promptly suppress it. Whether those robbers should be pursued on the land, the local authorities be made responsible for these atrocities, or any other measure be resorted to, to suppress them, is submitted to the consideration of Congress.

In execution of the laws for the suppression of the slave trade, a vessel has been occasionally sent from that squadron to the coast of Africa, with orders to return thence by the usual track of the slave ships, and to seize any of our vessels which might be engaged in that trade. None have been found, and, it is believed, that none are thus employed. It is well known, however, that the trade still exists under other flags.

The health of our squadron while at Thompson's Island, has been much better during the present, than it was the last season. Some improvements have been made, and others are contemplated there, which, it is believed, will have a very salutary effect.

On the Pacific, our commerce has much increased, and on that coast, as well as on that sea, the United States have many important interests which require attention and protection. It is thought that all the considerations which suggested the expediency of placing a squadron on that sea, operate with augmented force, for maintaining it there at least in an equal extent.

For detailed information respecting the state of our maritime force, on each sea, the improvement necessary to be made on either, in the organization of the Naval Establishment, generally, and of the laws for its better government, I refer you to the Report of the Secretary of the Navy, which is herewith communicated.

The revenue of the Post Office Department has received a considerable augmentation in the present year. The current receipts will exceed the expenditures, although the transportation of the mail, within the year, has been much increased. A Report of the Postmaster General, which is transmitted, will furnish, in detail, the necessary information respecting the administration and present state of this Department.

In conformity with a resolution of Congress, of the last Session, an invitation was given to General Lafayette to visit the United States, with an assur-

ance that a ship of war should attend at any port of France which he might designate, to receive and convey him across the Atlantic, whenever it might be convenient for him to sail. He declined the offer of the public ship, from motives of delicacy, but assured me that he had long intended, and would certainly visit our Union, in the course of the present year. In August last he arrived at New York, where he was received with the warmth of affection and gratitude to which his very important and disinterested services and sacrifices, in our Revolutionary struggle, so eminently entitled him. A corresponding sentiment has since been manifested, in his favor, throughout every portion of our Union, and affectionate invitations have been given him to extend his visits to them. To these he has yielded all the accommodation in his power. At every designated point of rendezvous, the whole population of the neighboring country has been assembled to greet him, among whom it has excited, in a peculiar manner, the sensibility of all, to behold the surviving members of our Revolutionary contest, civil and military, who had shared with him in the toils and dangers of the war, many of them in a decrepit state. A more interesting spectacle, it is believed, was never witnessed, because none could be founded on purer principles—none proceed from higher or more disinterested motives. That the feelings of those who had fought and bled with him, in a common cause, should have been much excited, was natural. There are, however, circumstances attending these interviews which pervaded the whole community, and touched the breasts of every age, even the youngest among us. There was not an individual present who had not some relative who had not partaken in those scenes, nor an infant who had not heard the relation of them. But the circumstance which was most sensibly felt, and which his presence brought forcibly to the recollection of all, was the great cause in which we were engaged, and the blessings which we have derived from our success in it. The struggle was for independence and liberty, public and personal, and in this we succeeded. The meeting with one who had borne so distinguished a part in that great struggle, and from such lofty and disinterested motives, could not fail to affect, profoundly, every individual, and of every age. It is natural that we should all take a deep interest in his future welfare, as we do. His high claims on our Union are felt, and the sentiment universal, that they should be met in a generous spirit. Under these impressions, I invite your attention to the subject, with a view that, regarding his very important services, losses, and sacrifices, a provision may be made, and tendered to him, which shall correspond with the sentiments, and be worthy the character, of the American people.

In turning our attention to the condition of the civilized world, in which the United States have always taken a deep interest, it is gratifying to see how large a portion of it is blessed with peace. The only wars which now exist within that limit, are those between Turkey and Greece, in Europe, and between Spain and the new Governments, our neighbors, in this hemisphere. In both these wars, the cause of independence, of liberty, and humanity, continues to prevail. The success of Greece, when the relative population of the contending parties is considered, commands our admiration and applause, and that it has had a similar effect with the neighboring powers, is obvious. The feeling of the whole

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civilized world is excited, in a high degree, in their favor. May we not hope that these sentiments, winning on the hearts of their respective Governments, may lead to a more decisive result? that they may produce an accord among them, to replace Greece on the ground which she formerly held, and to which her heroic exertions, at this day, so eminently entitle her?

With respect to the contest, to which our neighbors are a party, it is evident that Spain, as a power, is scarcely felt in it. These new States had completely achieved their independence, before it was acknowledged by the United States, and they have since maintained it, with little foreign pressure. The disturbances which have appeared in certain portions of that vast territory, have proceeded from internal causes, which had their origin in their former governments, and have not yet been thoroughly removed. It is manifest that these causes are daily losing their effect, and that these new States are settling down under governments elective and representative in every branch, similar to our own. In this course we ardently wish them to persevere, under a firm conviction that it will promote their happiness. In this their career, however, we have not interfered, believing that every people have a right to institute for themselves the government, which, in their judgment, may suit them best. Our example is before them, of the good effect of which, being our neighbors, they are competent judges, and to their judgment we leave it, in the expectation that other powers will pursue the same policy. The deep interest which we take in their independence, which we have acknowledged, and in their enjoyment of all the rights incident thereto, especially in the very important one of instituting their own governments, has been declared and is known to the world. Separated as we are from Europe by the great Atlantic Ocean, we can have no concern in the wars of the European Governments, nor in the causes which produce them. The balance of power between them, into whichever scale it may turn in its various vibrations, cannot affect us. It is the interest of the United States to preserve the most friendly relations with every power, and on conditions fair, equal, and applicable to all. But, in regard to our neighbors our situation is different. It is impossible for the European Governments to interfere in their concerns, especially in those alluded to, which are vital, without affecting us; indeed, the motive which might induce such interference in the present state of the war between the parties, if a war it may be called, would appear to be equally applicable to us. It is gratifying to know that some of the powers with whom we enjoy a very friendly intercourse, and to whom these views have been communicated, have appeared to acquiesce in them.

The augmentation of our population, with the expansion of our Union, and increased number of States, have produced effects in certain branches of our system, which merit the attention of Congress. Some of our arrangements, and particularly the Judiciary Establishment, were made with a view to the original thirteen States only. Since then the United States have acquired a vast extent of territory; eleven new States have been admitted into the Union, and territories have been laid off for three others, which will likewise be admitted at no distant day. An organization of the Supreme Court, which assigns to the judges any portion of

the duties which belong to the inferior, requiring their passage over so vast a space, under any distribution of the States that may now be made, if not impracticable in the execution, must render it impossible for them to discharge the duties of either branch with advantage to the Union. The duties of the Supreme Court would be of great importance, if its decisions were confined to the ordinary limits of other tribunals; but when it is considered that this court decides, and in the last resort, on all the great questions which arise under our constitution, involving those between the United States, individually, between the States and the United States, and between the latter and foreign powers, too high an estimate of their importance cannot be formed. The great interests of the nation seem to require, that the Judges of the Supreme Court should be exempted from every other duty, than those which are incident to that high trust. The organization of the inferior courts would, of course, be adapted to circumstances. It is presumed that such a one might be formed, as would secure an able and faithful discharge of their duties, and without any material augmentation of expense.

The condition of the Aborigines within our limits, and especially those who are within the limits of any of the States, merits likewise particular attention. Experience has shown, that, unless the tribes be civilized, they can never be incorporated into our system, in any form whatever. It has likewise shown, that, in the regular augmentation of our population, with the extension of our settlements, their situation will become deplorable, if their extinction is not menaced. Some well-digested plan, which will rescue them from such calamities, is due to their rights, to the rights of humanity, and to the honor of the nation. Their civilization is indispensable to their safety; and this can be accomplished only by degrees. The process must commence with the infant State, through whom some effect may be wrought on the parental. Difficulties of the most serious character present themselves to the attainment of this very desirable result, on the territory on which they now reside. To remove them from it by force, even with a view to their own security and happiness, would be revolting to humanity, and utterly unjustifiable. Between the limits of our present States and territories, and the Rocky Mountain and Mexico, there is a vast territory, to which they might be invited, with inducements which might be successful. It is thought if that territory should be divided into Districts, by previous agreement with the tribes now resident there, and civil governments be established in each, with schools, for every branch of instruction in literature, and the arts of civilized life, that all the tribes now within our limits might gradually be drawn there. The execution of this plan would necessarily be attended with expense, and that not inconsiderable, but it is doubted whether any other can be devised which would be less liable to that objection, or more likely to succeed.

In looking to the interests which the United States have on the Pacific Ocean, and on the western coast of this Continent, the propriety of establishing a military post at the mouth of Columbia River, or at some other point in that quarter, within our acknowledged limits, is submitted to the consideration of Congress. Our commerce and fisheries on that sea, and along the coast, have much increased, and are increasing. It is thought that a

military post, to which our ships of war might resort, would afford protection to every interest, and have a tendency to conciliate the tribes to the north-west, with whom our trade is extensive. It is thought, also, that, by the establishment of such a post, the intercourse between our Western States and territories, and the Pacific, and our trade with the tribes residing in the interior, on each side of the Rocky Mountain, would be essentially promoted. To carry this object into effect, the appropriation of an adequate sum to authorize the employment of a frigate, with an officer of the corps of engineers, to explore the mouth of the Columbia River, and the coast contiguous thereto, to enable the Executive to make such establishment at the most suitable point, is recommended to Congress.

It is thought that attention is also due to the improvement of this city. The communication between the public buildings, and in various other parts, and the grounds around those buildings, require it. It is presumed also, that the completion of the canal, from the Tiber to the Eastern Branch, would have a very salutary effect. Great exertions have been made, and expenses incurred, by the citizens, in improvements of various kinds; but those which are suggested, belong exclusively to the Government, or are of a nature to require expenditures beyond their resources. The public lots which are still for sale, would, it is not doubted, be more than adequate to these purposes.

From the view above presented, it is manifest, that the situation of the United States is, in the highest degree, prosperous and happy. There is no object which, as a people, we can desire, which we do not possess, or which is not within our reach. Blessed with governments the happiest which the world ever knew, with no distinct orders in society, or divided interests in the vast territory over which their dominion extends, we have every motive to cling together, which can animate a virtuous and enlightened people. The great object is to preserve those blessings, and to hand them down to the latest posterity. Our experience ought to satisfy us, that our progress, under the most correct and provident policy, will not be exempt from danger. Our institutions form an important epoch in the history of the civilized world. On their preservation, and in their utmost purity, every thing will depend. Extending, as our interests do, to every part of the inhabited globe, and to every sea, to which our citizens are carried by their industry and enterprise, to which they are invited by the wants of others, and have a right to go, we must either protect them in the enjoyment of their rights, or abandon them, in certain events, to waste and desolation. Our attitude is highly interesting as relates to other powers, and particularly to our Southern neighbors. We have duties to perform with respect to all, to which we must be faithful. To every kind of danger we should pay the most vigilant and unceasing attention; remove the cause when practicable: and be prepared to meet it when inevitable.

Against foreign danger, the policy of the Government seems to be already settled. The events of the late war admonished us to make our maritime frontier impregnable, by a well-digested chain of fortifications, and to give efficient protection to our commerce, by augmenting our Navy to a certain extent; which has been steadily pursued, and which it is incumbent upon us to complete, as soon as circumstances will permit. In the event of war, it is

on the maritime frontier that we shall be assailed. It is in that quarter, therefore, that we should be prepared to meet the attack. It is there that our whole force will be called into action, to prevent the destruction of our towns, and the desolation and pillage of the interior. To give full effect to this policy, great improvements will be indispensable. Access to those works, by every practicable communication, should be made easy, and in every direction. The intercourse, also, between every part of our Union, should also be promoted, and facilitated by the exercise of those powers, which may comport with a faithful regard to the great principles of our constitution. With respect to internal causes, those great principles point out, with equal certainty, the policy to be pursued. Resting on the people, as our governments do, State and National, with well-defined powers, it is of the highest importance that they, severally, keep within the limits prescribed to them. Fulfilling that sacred duty, it is of equal importance, the movement between them be harmonious; and in case of any disagreement, should such occur, that a calm appeal be made to the people; and that their voice be heard, and promptly obeyed. Both Governments being instituted for the common good, they cannot fail to prosper, while those who made them are attentive to the conduct of their representatives, and control their measures. In the pursuit of these great objects, let a generous spirit, and national views and feelings be indulged; and let every part recollect, that, by cherishing that spirit, and improving the condition of the others, in what relates to their welfare, the general interest will not only be promoted, but the local advantage reciprocated, by all.

I cannot conclude this communication, the last of the kind which I shall have to make, without recollecting, with great sensibility and heartfelt gratitude, the many instances of the public confidence, and the generous support which I have received from my fellow-citizens in the various trusts with which I have been honored. Having commenced my service in early youth, and continued it since with few and short intervals, I have witnessed the great difficulties to which our Union has been exposed, and admired the virtue and courage with which they were surmounted. From the present prosperous and happy state, I derive a gratification which I cannot express. That these blessings may be preserved and perpetuated, will be the object of my fervent and unceasing prayers to the Supreme Ruler of the Universe. JAMES MONROE.

WASHINGTON, December 7, 1824.

On motion of Mr. LLOYD, of Massachusetts, it was

*Ordered*, That three thousand copies of the Message be printed for the use of the Senate.

On motion of Mr. BARBOUR, it was

*Ordered*, That fifteen hundred copies of the documents accompanying said Message be printed for the use of the Senate.

WEDNESDAY, December 8.

Mr. BARBOUR, from the Joint Committee appointed to consider and report what respectful mode it may be proper for Congress to adopt to receive General LAFAYETTE, made the following report:

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"The Joint Committee propose that each House adopt its own manner of receiving General LAFAYETTE.

"The Committee on the part of the Senate recommend that the President of the Senate invite General LAFAYETTE to take a seat, such as he shall designate, in the Senate Chamber: that the committee deliver the invitation to the General, and introduce him into the Senate, and the members receive the General standing."

In delivering this report, Mr. BARBOUR stated that the Joint Committee, entertaining every wish to make the reception of General LAFAYETTE as complimentary as possible, yet found difficulties in the way of any arrangement for a joint proceeding, which were not easily removable; and it was therefore thought by the committee best for each House to adopt its own arrangements, and its own form, in the reception of that distinguished individual.

It was resolved, *unanimously*, That the Senate do concur in the report.

THURSDAY, December 9.

*Reception of Lafayette.*

Mr. BARBOUR, from the committee appointed to perform that duty, reported that they had waited on General LAFAYETTE, with the invitation of the Senate, and that he had informed them he would wait on the Senate this day at one o'clock.

At one o'clock, General LAFAYETTE entered the Chamber of the Senate, accompanied by the committee of that body. On entering the bar, Mr. BARBOUR, chairman of the committee, announced the presence of the General, in the following words: "We introduce General LAFAYETTE to the Senate of the United States;" whereupon, the President of the Senate and the Senators rose from their seats, and the General, advancing towards the Chair of the Senate, was invited by the President to take a seat, prepared for him on the right of the Chair.

Soon after the General was seated,

Mr. BARBOUR moved that the Senate adjourn.

Mr. LLOYD, of Mass., concurred in the wish for the Senate to adjourn, to afford the members an opportunity of paying their individual respects to Gen. LAFAYETTE.

The Senate then adjourned, and the Senators, individually, beginning with the President of the Senate, tendered him their respects, which were cordially and feelingly reciprocated.

TUESDAY, December 14.

*Inland Trade between Missouri and Santa Fe, of New Mexico.*

Mr. BENTON presented the petition of sundry inhabitants of the state of Missouri, on the subject of a trade and intercourse between that State and the internal Provinces of Mexico.

[This petition recited, that a beneficial trade had been carried on for some years between the inhabitants of the two countries, in which domestic cot-

tons and other articles had been carried out from the United States, and gold, silver, furs, and mules, brought back in return; that the intervening tribes of Indians presented the only obstacle to the successful prosecution of the trade upon a large scale; that the merchandise had to be carried through a tract of country inhabited by different tribes, to enter whose territory, without a license, was penal under the laws of the United States, and dangerous, unless the consent of the tribes was previously obtained: that some outrages to persons, and repeated depredations on property, had already been committed; and that a total interruption to the commercial and social intercourse, so happily begun in that quarter between the citizens of the two Republics, might be apprehended, unless the Government of the United States interposed for its protection. The petition, therefore, prayed—

1. That the right of an unmolested passage, for persons and property, upon a designated route, between the frontiers of Missouri and the internal provinces of Mexico, might be obtained by treaty stipulations from the Indians referred to.

2. That a military post and an Indian agency might be established on the Arkansas River, at the point of the intersection of that river by the proposed route.]

The petition, upon the motion of Mr. BENTON, was referred to the Committee on Indian Affairs.

MONDAY, December 20.

*General Lafayette.*

Mr. HAYNE, from the committee to whom for was referred the subject of making provision Gen. LAFAYETTE, reported the following bill:

"A BILL making provision for General Lafayette.

"Be it enacted, &c., That the sum of two hundred thousand dollars be, and the same is hereby, granted to Major General Lafayette, in compensation for his important services and expenditures during the American Revolution, and that, for this purpose, a stock to that amount be issued in his favor, dated the 4th of July, 1824, bearing an annual interest of six per cent., payable quarter yearly, and redeemable on the 31st December, 1834.

"Sec. 2. And be it further enacted, That one complete and entire Township of Land be, and the same is hereby, granted to the said Major General Lafayette, and that the President of the United States be authorized to cause the said Township to be located on any of the Public Lands which remain unsold, and that patents be issued to General Lafayette for the same.

The bill was twice read, by general consent, and Mr. HAYNE gave notice that he should move its third reading to-morrow.

TUESDAY, December 21.

*Gratitude to Lafayette.*

The Senate then, according to the order of the day, took up the bill making provision for General LAFAYETTE; and, no amendment being proposed thereto, the question was about to be put on ordering the bill to be read a third time.

Mr. MAÇON rose. It was with painful reluctance, he said, that he felt himself obliged to oppose his voice to the passage of this bill. He admitted, to the full extent claimed for them, the great and meritorious services of General Lafayette, and he did not object to the precise sum which this bill proposed to award him; but he objected to the bill on this ground: he considered General Lafayette, to all intents and purposes, as having been, during our Revolution, a son, adopted into the family, taken into the household, and placed, in every respect, on the same footing with the other sons of the same family. To treat him as others were treated, was all, in this view of his relation to us, that could be required, and this had been done. That General Lafayette made great sacrifices and spent much of his money in the service of this country, said Mr. M., I as firmly believe as I do any other thing under the sun; I have no doubt that every faculty of his mind and body were exerted in the Revolutionary war, in defence of this country; but this was equally the case with all the sons of the family. Many native Americans spent their all, made great sacrifices, and devoted their lives in the same cause. This was the ground of his objection to this bill, which, he repeated, it was as disagreeable to him to state as it could be to the Senate to hear. He did not mean to take up the time of the Senate in debate upon the principle of the bill, or to move any amendment to it. He admitted that, when such things were done, they should be done with a free hand. It was to the principle of the bill, therefore, and not to the sum proposed to be given by it, that he objected. With regard to the details of the bill, however, he was rather of the opinion that it would have been better to have given so much money, which we have in the treasury, than to have given stock to the amount.

Mr. BROWN, of Ohio, said that this bill purported to give a compensation to General Lafayette for services rendered. He should like to know what evidence had induced the committee to suppose that the amount proposed was the proper amount of compensation. He should like to know how far the proposed appropriation was grounded on claims for services or for expenditure. He should, indeed, like to see the phraseology of the bill changed. He should like to have the bill recommitted, also, for another and a peculiar season. As it proposed to raise money by a loan, he doubted whether that provision of the bill was not invading the peculiar privilege of the House of Representatives. Under the influence of these considerations, he moved to recommit the bill.

Mr. HAYNE, of South Carolina, said he had entertained the hope that this bill would have given rise to no discussion; and if no other objection had been made to it than that of his friend, (Mr. MAÇON,) who was opposed, upon principle, to making an appropriation in any case, or under any circumstances, by way of

compensation for losses and services in the public cause, he did not know that he should now have risen. But the objection of the gentleman from Ohio, made it his duty to submit, as briefly as possible, his views of this question. He trusted, he said, that he should be able to satisfy the Senate, and to satisfy even the scruples of the gentleman himself, that there was no occasion at this time to recommit the bill. The objection of his friend on his right (Mr. MAÇON) went to the root of the bill; for, Mr. H. said, he understood that gentleman to say that, though an individual might have spent his substance in the service of his country, and put his hand into his pocket and paid out money for its use, that money should not be refunded to him by the Government. All this, said Mr. H., I shall be able to show that General Lafayette has done, and that the adoption of the measure now proposed will be not only an act of justice to him, but a duty which we owe to ourselves. Mr. H. said he held in his hands documents which he had not intended to submit to the Senate, because he had already submitted them very generally to the private inspection of the members; but, called upon, as he now was, he felt it to be his duty, to present them publicly to the Senate. Mr. H. then submitted a statement, founded on a document which had been received from France by a member of the Senate, from which it appeared that, when General Lafayette embarked for America, in 1777, he possessed an income of 146,000 francs, about \$28,700—an income which, it is well known, had been reduced by his losses and sacrifices in the cause of liberty throughout the world, to a very small sum.

It also appeared, from the same document, that, during six years, from 1777 to 1783, the General had expended in the American service, 700,000 francs, equal to 140,000 dollars. Mr. H. adverted to further sacrifices which the General had made in the cause of liberty, as established by this document; but the only fact in it to which he wished particularly to draw the attention of the Senate, was, that he sacrificed, more than forty years ago, one hundred and forty thousand dollars of his private fortune in the service of this country. And how was this sacrifice made? Under what circumstances? Was he one of our own citizens,—one of those whose lives and fortunes were necessarily exposed during the vicissitudes of a contest for the right of self-government? No, sir, said Mr. H., no such thing. If he had been a native American, and had lost his whole estate by the war, he would have incurred a misfortune to which all his fellow-citizens were liable in common with himself. But he was in the enjoyment of rank and fortune in his own country, cheered by the smiles of his sovereign, and rich in the treasures of domestic joy. And yet he tore himself away from his country and his home, to fight the battles of freedom in a foreign land, and to make common cause with a people to whom

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he owed no duty—a people then engaged in a contest considered almost hopeless. Nor was he satisfied with the devotion of his personal services. He equipped and armed a regiment at his own proper charge, and came here with a vessel freighted with arms and munitions of war, which he distributed gratuitously among your people. And it is a matter of record on the pages of your history, that he put shoes on the feet of your barefoot and suffering soldiery. For these services he asked no recompense—he received none. He spent his fortune for you; he shed his blood for you; and without acquiring any thing but a claim upon your gratitude, he impoverished himself. And what, in recompense, has this Government done for him? It was not until the year 1794, that they gave to him the full pay, without interest, which he was entitled to have received twelve or fourteen years before. Did they then attempt to remunerate him for the service, other than military, which the gallant General had rendered to the country? No, sir. But, if an American citizen had put his hand into his pocket, equipped a regiment for the service of his country, clothed its nakedness, and put shoes upon their bleeding feet, would he not have been entitled to compensation for such expenditure? Sir, if we were to resort to a calculation of pounds, shillings, and pence; if we were to draw up an account-current with General Lafayette, the balance in his favor would far exceed the amount which by this bill it is proposed to appropriate. But this, Mr. H. said, was not the ground on which he was disposed to rest the measure. He would appeal to higher and more generous considerations. It is not that an account is to be settled, but a debt of gratitude is to be *acknowledged*—a debt which can never be discharged.

Mr. H. stated that there was an incident in the life of General Lafayette, which was explained by the documents which he held in his hand, and which presented his conduct in such a delightful point of view, that he could not refrain from bringing it to the view of the Senate, though he should not found upon it any claim for remuneration for the sacrifices which the General had incurred on the occasion alluded to. It would be recollected that, in March, 1803, Congress made a grant of 11,520 acres of land to Gen. Lafayette. In the year following, he was authorized to locate his warrant on any vacant land in the territory of Orleans; and, on the 7th April, 1806, his agent in this country did locate a tract of 1,000 acres vacant land adjoining the city of New Orleans. On the 2d March, 1807, Congress, without advertent to this location in behalf of the General, and, indeed, wholly unconscious of the fact that it had been made, granted to the Corporation of the city of New Orleans a space of six hundred yards around the fortifications of the city, including a valuable portion of the very land which had been previously entered by the General. He was immediately informed of the

fact; it was stated to him that his right to this land was unquestionable; and Mr. H. held in his hand a statement made by an eminent lawyer and jurist, now a member of the other House, showing that a legal opinion was forwarded, assuring the General that, in a contest with the city of New Orleans, he must succeed. Another document which Mr. Hayne had obtained from a different source, stated that the value of the land had even then been discovered, and that \$50,000 could have been obtained for the General's title to it. And what was the conduct of Lafayette on being informed of these facts? He promptly, and without hesitation, communicated to his agent "that he would not consent even to inquire into the validity of his title; that he could not think of entering into litigation with any public body in the United States; that the property had been gratuitously bestowed upon him by the United States, and it was with them to say what had been given;" and he accompanied these declarations by a positive direction to his agent to relinquish his entry, and to make a location elsewhere. This has been done, and the certificate from the Land Office proves, that the land substituted for that which has been lost, is of very inconsiderable value. General Lafayette, however, did not stop here. He had been induced to dispose of a part of his interest in this land to an Irish baronet, Sir Josiah Coghill. His contract with this gentleman created, of course, much embarrassment to him, but the General only considered that it *might also embarrass the Government of the United States*. He made an appeal to that gentleman, who, with a liberality worthy of all praise, agreed to relinquish his claims to the land in question, and accepted a claim on other lands in satisfaction for them. Lafayette stopped not even here; he was not satisfied while any thing remained to be done. I have myself, said Mr. H., seen and examined on file, in the Land Office, this deed of relinquishment, deposited there by General Lafayette, himself, to secure the Government from all future difficulty. It only remains for me, said Mr. H., to add, that on a portion of the land thus generously relinquished, now stands a valuable part of the city of New Orleans, valued by gentlemen well acquainted with it, (according to estimates now before him,) at from *four to five hundred thousand dollars*.

It is perfectly immaterial, said Mr. H., to inquire, whether some legal difficulty might not have existed in establishing the General's title. Nothing but a judicial investigation could have settled the rights of the parties; and, as the General has relinquished his claim, and has never, at any time, claimed indemnity, that investigation would now be useless. But, the point on which he delighted to dwell, was the magnanimity, the refinement of feeling, the noble delicacy of sentiment, which prompted the General at once to abandon his claims, to refuse even to inquire into them, and, wholly

regardless of his own interests, to look only to the interests of our country.

But there are still grounds almost as strong as its equity and justice, said Mr. H., upon which this claim may be placed. According even to precedent, if precedents were consulted in such a case, the Government would be bound to recompense the services of Lafayette. Do gentlemen doubt upon this point, I could refer to numerous instances of legislation upon the same principles on which this bill depends. Mr. H. here referred to several: to the act making compensation for the "sacrifices and services" of Baron Steuben; to that which appropriates, in the language of this bill, "an entire township of land" for a recompense to Arnold Henry Dohrman, for similar services; to the act making provision for the daughters of Count de Grasse; and to that providing for the widow of Alexander Hamilton.

But, Mr. H. said, he would not rely upon precedent for a justification of this measure. When the government of a nation consults the dictates of justice, and obeys the impulse of noble sentiments, it does what contributes to the glory and interest of the people. Neither was there any danger to be apprehended on the score of precedent, from the passage of this bill. Can this bill, said he, ever be drawn into precedent? Can such a case as Lafayette's ever again occur? Can the nation be born again? Can it assume a second childhood? Can it ever be reduced to a state of such poverty as to require similar services? And, if this nation could be shorn of its power; be reduced to extreme distress by a second struggle for its independence; and, in the winter of its fortunes should be anxiously looking for succor, in arms, in men, and in money; and, at such a crisis, a foreign nobleman, bound by no ties to us, should make a crusade in our behalf; embark himself and his fortunes in our cause; pour forth his treasures, shed his blood in our defence; and, whilst the scale of our destiny is in equipoise, throw himself into the balance; would you consider the example which you would set by this bill, as one which you ought not, in such a case, to follow? No, sir; the case before us is one of its own kind; it can never happen again; and if it could, the possibility of such a recurrence ought to constitute no objection to the proposed measure.

As to the objection which had been urged by the honorable gentleman from Ohio, *on the details* of the bill, Mr. H. would only observe, that it was impossible, in a measure of this nature, to meet the views of every gentleman. The committee had found that, while great unanimity prevailed among the members as to the thing to be done, much difference of opinion existed as to the best manner of doing it. He could only conjure gentlemen, therefore, who concurred in the *principle*, to come prepared to surrender their peculiar views in relation to the details. Some gentlemen prefer a grant of money; others stock; and others land. The

committee had taken great pains to give to their propositions a form which should be, as far as possible, acceptable to all. Stock was preferred to money, because, while it was equal in value, and was always convertible into money, even at a premium, it would furnish a *secure and certain income*, which would render the veteran comfortable in the evening of his days, and smooth his path to the grave; and, being the last of our debts to be redeemed, would remain upon record as a standing monument of the gratitude of a free people. The donation of land had been introduced, partly from a hope that it might induce the settlement of the beloved family in our country. It would be a rich provision for the grandchildren of Lafayette. It was thought, moreover, it would add to the grace of the measure. Without being over much disposed to consult the opinions of Europe, it was important, as to its aspect abroad, that Congress should act upon this subject not only liberally, but gracefully. A thing of this sort, he might be allowed to add, to be well done, should be promptly done, and with unanimity. He entreated of gentlemen, therefore, who were favorable to the principle of the bill, to yield up the objections which they might feel to any part of the details, assuring them that much pains had been taken to adapt them to the prevailing sentiment of the members.

There is still another consideration, which had influence on the minds of the committee, and which Mr. HAYNE considered as not the least important connected with this subject. It is, that the provision to be made should not only be worthy of the distinguished person for whom it is intended, but that it should be worthy of the character of the nation—worthy of the American people. National character is national wealth; it gives a tone to the public sentiment and feeling, which add strength and energy to the country. Mr. H. was certainly not disposed to look abroad for a rule of conduct. He would not consult the mistaken opinion of foreign nations, when we had any great duty to perform. And yet it was highly desirable that we should always so act as to command the respect of the world. Now, what would be thought of us in Europe, if, after all that has passed, we should fail to make a generous and liberal provision for our venerable guest? We have, under circumstances calculated to give to the event great éclat, invited him to our shores. We have received him with the utmost enthusiasm. The people have everywhere greeted him in the warmest terms of gratitude and affection. The attention of the civilized world has been drawn to the event, as one even of national importance. It is unfortunately too well known that the object of our affectionate attachment has spent his fortune in the service of mankind, and that we ourselves have received a large portion of the wealth which he has never hesitated freely to surrender in the holy cause of

DECEMBER, 1824.]

*General Lafayette.*

[SENATE.]

freedom. Now what will be thought of us in Europe, and, what is much more important, how will we deserve to be thought of, if we send back our venerable guest without any more substantial proof of our gratitude, than vague expressions of regard? We will be *accused* (and he knew not how it could be said *unjustly*) of pretending to sentiments which we did not feel, and with paying substantial services with unmeaning professions of esteem. By bringing Lafayette to the United States, we place him in a new and extraordinary situation in society. We have connected him with our history. You have made him a spectacle for the world to gaze on. He cannot go back to France and become the private citizen he was when he left it. You have, by the universal homage of your hearts and tongues, made his house a shrine, to which every pilgrim of liberty, from every quarter of the world, will repair. At least, let him not, after this, want the means of giving welcome to the Americans who, whenever they visit the shores of France, will repair, in crowds, to his hospitable mansion, to testify their veneration to the illustrious compatriot of their fathers. Lafayette will be a connecting link between the old world and the new. By your voluntary act you have placed him in this extraordinary situation; and if, after all that has been done and said, we permit him to return home, without passing the bill on your table, we must suffer a loss of reputation at home and abroad, which time cannot repair. Mr. HAYNE concluded, by regretting that he had been compelled to say even thus much on the subject. He knew that in this House, as in the nation, there existed but one feeling of gratitude and affection for Lafayette. He knew that the bill would pass with more than usual unanimity, but he considered gentlemen, who had scruples on the score of precedent, or who objected to the details of the plan, as entitled to the explanations which he had attempted to give, of the views and opinions of the committee.

Mr. MACON rose to disclaim the belief that Gen. Lafayette had ever furnished any document, or made to any person any intimation whatever, on the subject of the measure now before the Senate. As for himself, Mr. M. said, he wished it to be understood that, in opposing this bill, he discharged what was to him a painful duty. His objection was not to the details, but to the principle of the bill, and the arguments of the gentleman had not satisfied him that the objection was not well-founded. Not that he had any doubt of the truth of the statements which had been made by the gentleman from South Carolina. With respect to Europe, Mr. M. said that he had no doubt that all the respect which had been shown to General Lafayette here, was unpleasant to the rulers of that country. On this side of the water, all were glad to see him; even the Tories who were yet living would be glad to see him. Among a nation of strangers to his person,

General Lafayette could go nowhere in this country without meeting with friends. No hand, in any part of this country, touches his, but he may feel the heart's blood beat in its fingers. Mr. M. said he should regret it, if the South, when he goes there, should be behind any other part of the Union in their demonstrations of regard for this distinguished man. He did not believe they would be. Wherever he moves, among the mountains, or on the plains, he receives a heartfelt welcome. This, Mr. M. said, would sufficiently satisfy Europe, if any doubt remained on that point, what is the opinion which this country entertains of the services of Lafayette.

The bill was then ordered to be engrossed for a third reading.

Mr. SMITH, of Maryland, entirely according in the suggestion of the gentleman from South Carolina, that whatever was done on this subject, if done, ought to be done quickly, moved that the bill should have its third reading this day.

The engrossed bill making provision for General Lafayette was accordingly read a third time: and the question being stated on its passage—

The yeas and nays were ordered, and were taken as follows:

YEAS. — Messrs. Barbour, Bouigny, Branch, Chandler, Clayton, Dickerson, Eaton, Jackson, Johnson of Kentucky, Johnston of Louisiana, Kelly, King of Alabama, King of New York, Knight, Lanman, Lloyd of Massachusetts, Lloyd of Maryland, Edwards, Elliott, Findlay, Gaillard, Hayne, Holmes of Maine, Holmes of Mississippi, Lowrie, McLean, Mills, Palmer, Parrott, Seymour, Smith, Talbot, Taylor, Thomas, Van Buren, Van Dyke, Williams.

NAYS. — Messrs. Barton, Bell, Brown, Cobb, Macon, Noble, Ruggles.

So the bill was passed, and sent to the House of Representatives for concurrence.

The Senate adjourned.

THURSDAY, December 28.

*General Lafayette.*

The bill passed by the House of Representatives, "concerning General LAFAYETTE," was brought to the Senate for concurrence.

The bill was read the first time, and ordered to be read a second time; it was then, on motion of Mr. BARBOUR, read a second time, without objection, and taken up in Committee of the Whole. No amendment or objection being made to the bill in Committee of the Whole, it was reported to the Senate, and, on the question of ordering the bill to a third reading, it was carried with but one audible dissenting voice.

The bill was then, on motion of Mr. SMITH, and by unanimous consent, read the third time, PASSED, *nemine contradicente*, and returned to the other House, with a message acquainting that House therewith.



THURSDAY, December 30.

*Communication to Lafayette.*

The resolution was received from the House of Representatives proposing a Joint Committee to wait on General Lafayette, and announce to him the passage of the act in his favor, and requesting his acceptance of the provision therein made for him.

The resolution was agreed to *nem. con.*, and Messrs. SMITH, HAYNE, and BOULIGNY, were appointed by the Chair, the committee on the part of the Senate.

MONDAY, January 8, 1825.

*Inland Trade between Missouri and Mexico.*

Mr. BENTON rose, and stated to the Senate that he had received a paper which he took the liberty of presenting. It was a statement of facts in relation to the origin, present state and future prospects, of trade and intercourse between the valley of the Mississippi and the internal provinces of Mexico. Intending, for a year past, to bring this subject before the Senate, and to claim for it a share of the national protection, Mr. B. said that he had felt the necessity of resting his demand upon a solid foundation of facts. With this view, he had addressed himself, during the last summer, to many inhabitants of Missouri, who had been personally engaged in the trade; among others, to Mr. Augustus Storrs, late of New Hampshire, a gentleman of character and intelligence, every way capable of relating things as he saw them, and incapable of relating them otherwise. This gentleman had been one of a caravan of eighty persons, one hundred and fifty-six horses, and twenty-three wagons and carriages, which had made the expedition from Missouri to Santa Fé, (of New Mexico,) in the months of May and June last. His account was full of interest and novelty. It sounded like romance to hear of caravans of men, horses, and wagons, traversing with their merchandise the vast plain which lies between the Mississippi and the *Rio del Norte*. The story seemed better adapted to Asia than to North America. But, romantic as it might seem, the reality had already exceeded the visions of the wildest imagination. The journey to New Mexico, but lately deemed a chimerical project, had become an affair of ordinary occurrence. Santa Fé, but lately the *Ultima Thule* of American enterprise, was now considered as a stage only in the progress, or rather, a new point of departure to our invincible citizens. Instead of turning back from that point, the caravans broke up there, and the subdivisions branched off in different directions in search of new theatres for their enterprise. Some proceeded down the river to the *Paso del Norte*; some to the mines of Chihuahua and Durango, in the province of New Biscay; some to Sonora and Sinaloa, on the Gulf of California; and some, seeking new lines of communication

with the Pacific, had undertaken to descend the western slope of our continent, through the unexplored regions of the Multnomah and Buenaventura. The fruit of these enterprises, for the present year, amounted to \$190,000 in gold and silver bullion and coin, and precious furs; a sum considerable, in itself, in the commerce of an infant State, but chiefly deserving a statesman's notice as an earnest of what might be expected from a regulated and protected trade. The principal article given in exchange, is that of which we have the greatest abundance, and which has the peculiar advantage of making the circuit of the Union before it departs from the territories of the republic—cotton—which grows in the South, is manufactured in the North, and exported from the West. Mr. B. said that the attention of the Senate had already been drawn to this subject, and the Committee on Indian Affairs stood charged with an inquiry into the expediency of treating with the Indian tribes between Missouri and Mexico, for the right of a safe passage through their countries. The paper presented contained information essential to that committee. It contained precise information upon the route to be pursued, and the tribes to be conciliated. It contained, besides, authentic details upon the extent and value of the trade, and suggestions for its protection. It had been drawn up at his particular request, and in answer to queries proposed by him. He deemed it the fairest, safest, and most satisfactory manner of conveying to the Senate the body of facts on which he should rely, when the question of extending protection to this trade shall be called up for decision. He therefore moved, that the statement of Mr. Storrs might be printed for the use of the Senate, and referred to the Committee on Indian Affairs.

The motion was agreed to.

*General Lafayette.*

Mr. SMITH, from the Joint Committee appointed to announce to General Lafayette the passage of the act in his favor, and to request his acceptance of the provision made for him, reported to the Senate the following copy of an address of the committee to the General, and his reply.

*From the Joint Committee to General Lafayette.*

GENERAL: We are a Committee of the Senate and House of Representatives, charged with the office of informing you of the passage of an act, a copy of which we now present. You will perceive from this act, sir, that the two Houses of Congress, aware of the large pecuniary as well as other sacrifices which your long and arduous devotion to the cause of freedom has cost you, have deemed it their privilege to reimburse a portion of them, as having been incurred in part on account of the United States. The principles that have marked your character will not permit you to oppose any objection to the discharge of so much of the national obligation to you as admits of it. We are directed to express to you the confidence, as well as the request, of the two Houses, that you will, by an ac-

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quiescence with their wishes in this respect, add another to the many and signal proofs you have afforded of your esteem for a people, whose esteem for you can never cease until they have ceased to prize the liberty they enjoy, and emulate the virtues by which it was acquired. We have only to subjoin an expression of our gratification in being the organs of this communication, and of the distinguished personal respect with which we are, your obedient servants,

SAMUEL SMITH,	} Committee of The Senate. Committee. of the House of Reps.
ROBT. Y. HAYNE,	
D. BOULIGNY,	
WM. S. ARCHER,	
S. VAN RENSSELAER,	
PHILIP S. MARKLEY,	

WASHINGTON, Jan. 1, 1825.

## GENERAL LAFAYETTE'S REPLY.

*Gentlemen of the Committee of both Houses of Congress:*

The immense and unexpected gift, which, in addition to former and considerable bounties, it has pleased Congress to confer upon me, calls for the warmest acknowledgments of an old American soldier and adopted son of the United States—two titles dearer to my heart than all the treasures of the world.

However proud I am of every sort of obligation received from the people of the United States and their Representatives in Congress, the large extent of this benefaction might have created in my mind feelings of hesitation, not inconsistent, I hope, with those of the most grateful reverence. But the so very kind resolution of both Houses, delivered by you, gentlemen, in terms of equal kindness, precludes all other sentiments but those of the lively and profound gratitude of which, in respectfully accepting the munificent favor, I have the honor to beg you will be the organ.

Permit me, also, gentlemen, to join a tender of my affectionate personal thanks to the expression of the highest respect, with which I have the honor to be,

Your obedient servant,

LAFAYETTE.

WASHINGTON, Jan. 1, 1825.

TUESDAY, January 4.

*Imprisonment for Debt.*

The Senate having resumed the consideration of the bill "to abolish imprisonment for debt,"

The first part of the first section of the bill being as follows:—"That no bail or security for the appearance of any defendant or defendants shall hereafter be required upon the service of the original, or meane process, issuing out of the Courts of the United States, in any action or suit whatever, founded on contract, express or implied, which shall be made or entered into after the 4th of July next, unless the plaintiff, or some other person, shall make oath or affirmation, before the clerk or officer attesting the said process, who is hereby empowered to administer the same, or before some other person authorized by law to administer oaths, that the defendant or defendants named in the process, are justly indebted to the plaintiff or plaintiffs

in the sum claimed by him or them, and shall further make oath or affirmation, that he or they have reason to believe that the said defendant or defendants intend to remove from the State or Territory, or intend to leave the United States:"

Mr. TAZEWELL moved, for reasons which he assigned in some detail, to strike out the clause printed above in *italics*.

Mr. JOHNSON, of Kentucky, deeming this proposition to affect, in a considerable degree, the principle of the bill, opposed it with much earnestness. Mr. VAN BUREN also opposed the amendment at some length.

Mr. TAZEWELL and Mr. MILLS severally supported the amendment at considerable length, as expedient and necessary, without any intention to impair the principle of the bill, or limit its scope more than the rights of creditors, as well as debtors, required.

Mr. JOHNSON, of Louisiana, delivered at large his sentiments in support of the bill and against the amendment.

The question being taken on the amendment proposed by Mr. TAZEWELL, it was decided as follows, by yeas and nays.

YEAS.—Messrs. Barton, Bell, Brown, Chandler, Clayton, Cobb, D'Wolf, Dickerson, Edwards, Elliott, Gaillard, Hayne, King of N. Y., Lloyd of Md., McIlvaine, Mills, Noble, Palmer, Parrott, Ruggles, Seymour, and Tazewell—22.

NAYS.—Messrs. Benton, Bouligny, Branch, Eaton, Findlay, Holmes of Me., Holmes of Miss., Jackson, Johnson of Ken., Johnston of Lou., Kelly, King of Ala., Lanman, Lloyd of Mass., Lowrie, McLean, Macon, Smith, Talbot, Thomas, Van Buren, and Williams—22.

The Senate being equally divided on the question, the motion to amend was of course lost.

The question was then taken on ordering the bill to be engrossed and read a third time, and was agreed to, without a division.

MONDAY, January 10.

*Suppression of Piracy.*

Mr. BARBOUR, from the Committee on Foreign Relations, to whom the several petitions on the subject of piracies were referred, made the following report, which was ordered to be printed:

"That our commerce for years has been harassed, and the lives of our citizens destroyed, by pirates issuing from the colonies of Spain, in the West Indies, is a fact derived not only from the message of the President, but is of universal notoriety. These outrages have been so long and so often repeated, and marked with such atrocious circumstances, that a detail of the particular cases would be as impracticable as unnecessary. Our Government, with a view to protect our citizens, has resorted to the means within their power, by stationing a naval force near the places where the pirates resort; a measure also pursued by other powers. Every effort, heretofore, has been unavailing, to put an end to these atrocities. These desperadoes, acquiring confidence from impunity, becoming more ferocious from habit, and multiplying by recruits from the

most abandoned of other nations, threaten the most disastrous mischiefs, justly alarming to that highly valuable and most respectable portion of our fellow-citizens whose pursuits are on the high seas. It is manifest, as well from facts derived from other sources, as from the message of the President, that the continuance of this evil is ascribable to the asylum afforded the banditti in the colonies of Spain. The Government of the United States, cherishing the most amicable disposition towards Spain, has presented the subject with great earnestness to the Spanish Government, demanding reparation for the past, and security for the future. To these reiterated remonstrances, no answer was returned till very recently, and to this day, all that has been obtained is a *promise* of a satisfactory answer to the applications of the Government of the United States: although Spain has been solemnly warned, that, if she did not promptly acquit herself of her obligations to us on this subject, our Government would be constrained, from the nature of the outrages, to become its own avenger, and, availing itself of its own resources, protect the commerce and lives of the American citizens from destruction. In the same spirit of conciliation, an appeal has been made to the local authorities, accompanied with a request, that if, from weakness, they were unable to exterminate the hordes of banditti who took shelter from pursuit within their territories, that permission might be given our forces to pursue them on land. This has been denied, on the vain punctilio of national dignity. The posture in which Spain now stands is that of connivance in these injuries, or incapacity to prevent them. "A sovereign who refuses to cause reparation to be made of the damage caused by his subject, or to punish the guilty, or, in short, to deliver him up, renders himself an accomplice in the injury, and becomes responsible for it." If the committee were of opinion that the refusal, on the part of Spain, was wilful, and not the result of inability, they would, with a full view of all the consequences which the measure involves, at once recommend an appeal to the last resort of nations, against Spain, and all her dependencies. But, believing, as they do, that courtesy requires that her refusal to do us justice should be placed on the ground of inability—an inability resulting from causes which the committee intentionally forbear to enumerate, they content themselves with recommending only such measures as are believed to be indispensable effectually to reach the mischief. And hence, they beg leave to present a bill with suitable provisions for the end designed."

The bill was twice read, and, on motion of Mr. BARBOUR, made the order of the day for Thursday next.

A Message was received from the President of the United States, (the same as that received in the other House on Friday,) respecting his accounts with, and disbursements for, the Government.

Mr. HAYNE moved that it be referred to a select committee.

Mr. SMITH said, that this request of the President was with a view to collect all the information necessary to be acted on hereafter. He supposed that a committee would be appointed in the other House, and, as it was not to be acted on during the present session, he suggest-

ed the propriety of laying it on the table, to be taken up for disposition at a future day.

Mr. KELLY thought that, if a joint committee of the two Houses were arranged, it would be more fitting the subject; each House organizing a committee on the subject would be merely obstructing each other.

Mr. HAYNE said, that it was a parliamentary rule that one House could not know what the other was acting on, and that each House should act for itself, except in matters of great national importance, when they might invite a joint committee. Yet, he had no objection to the latter course. His object was in substance a joint committee—it was to investigate facts, to ascertain what was doing in the other House, and present the facts to this House. This object would be attained by referring the Message to a select committee of this House, and they would not be acting superfluously in collecting and arranging the facts. If the gentleman from Alabama (Mr. KELLY) wished for a joint committee, let it be so; but he thought that the Senate ought to act for itself—it was a peculiar case which would require great attention, and the facts elicited would be very important.

Mr. BARBOUR observed, that a subject of this kind was one which would require mature consideration, before it could be acted on. It was obvious, that, at present, some difference of opinion existed, which, at a future period, would, probably, not be the case. He, therefore, to give time for reflection, moved that the Message lay on the table, to be taken up hereafter.

This motion was agreed to.

THURSDAY, January 18.

*Suppression of Piracy.*

The following Message was received from the PRESIDENT OF THE UNITED STATES, by Mr. Everett:

*To the Senate of the United States:*

In compliance with two resolutions of the Senate, the first of the 21st and the second of the 23d December last, requesting information respecting the injuries which have been sustained by our citizens, by piratical depredations, and other details connected therewith, and requesting also information of the measures which have been adopted for the suppression of piracy, and whether, in the opinion of the Executive, it will not be necessary to adopt other means for the accomplishment of the object; and, in that event, what other means it will be most advisable to recur to, I herewith transmit a report from the Secretary of State, and likewise a report from the Secretary of the Navy, with the documents referred to in each.

On the very important questions submitted to the Executive, as to the necessity of recurring to other more effectual means for the suppression of a practice so destructive of the lives and property of our citizens, I have to observe, that three expedients occur: one, by the pursuit of the offenders to the settled as well as the unsettled parts of the land and from whence they issue; another, by reprisal on the property of the inhabitants; and a third, by

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*Imprisonment for Debt.*

[SENATE.]

the blockade of the ports of those islands. It will be obvious that neither of these measures can be resorted to, in a spirit of amity with Spain, otherwise than in a firm belief that neither the Government of Spain, nor the government of either of the islands, has the power to suppress that atrocious practice, and that the United States interpose their aid for the accomplishment of an object which is of equal importance to them as well as to us. Acting on this principle, the facts which justify this proceeding being universally known and felt, by all engaged in commerce in that sea, it may fairly be presumed, that neither will the Government of Spain, nor the government of either of these islands, complain of a resort to either of those measures, or to all of them, should such resort be necessary. It is, therefore, suggested, that a power commensurate with either resource be granted to the Executive, to be exercised according to his discretion, and as circumstances may imperiously require. It is hoped that the manifestation of a policy so decisive will produce the happiest results; that it will rid these seas and this hemisphere of this practice. This hope is strengthened by the belief, that the Government of Spain, and the government of the islands, particularly of Cuba, whose chief is known here, will faithfully co-operate in such measures as may be necessary for the accomplishment of this very important object. To secure such co-operation, will be the earnest desire, and, of course, the zealous and persevering effort of the Executive.

JAMES MONROE.

WASHINGTON, 13th January, 1825.

The Message was read, and, with the documents accompanying it, ordered to be printed.

MONDAY, January 17.

*Imprisonment for Debt.*

The engrossed bill "to abolish imprisonment for debt," was again read; and, on the question, "Shall this bill pass?"

Mr. VAN DYKE, of Delaware, rose, and addressed the Senate as follows: Having been a member of the committee charged with the consideration of this bill, I have candidly lent my aid to remove objections which applied to it, as introduced by the gentleman who has been its zealous advocate. The project now presented is preferable to that which received the sanction of this honorable body at the last session; but it still presents difficulties that are, in my judgment, insuperable. To abolish imprisonment for debt, is the declared object of this bill; and to effect it, we are urged to adopt and put in motion all the new machinery of this new system. New oaths, new trials, new proofs, and a strange commixture of law and equity, are the means to be used to accomplish this object. From the best consideration that I have been able to give the subject, I cannot assent to such an experiment. The administration of justice between creditor and debtor, as now practised, is plain and familiar; where this innovation may lead us, it may be difficult to state; but one thing is not to be disguised; the creditor will be met with new difficulties

and accumulated expense in prosecuting a claim for a just debt. And whence do you obtain satisfactory evidence that it is necessary for the good of the nation, that such a system should be adopted? From what quarter of the country have you received a memorial suggesting such a plan as that proposed by this bill? I have heard of none; and my own observation and experience, within the limited circle of a few States, induces a belief that the dreadful picture of oppression which has been drawn, in vivid colors, by the advocates of the measure, is a creature of the imagination, and has no existence in real life. I boldly say, the original is not found in the Middle States, and gentlemen, in whom I place confidence, assure me that it will be sought in vain in other States. As a legislator, I do not perceive the necessity for this measure. I apprehend serious difficulties in executing the plan, and therefore feel constrained to vote against it. I ask the yeas and nays, that I may record my vote in opposition to the bill.

Mr. TAZEWELL said, his objection to the bill was, that its object was not to abolish imprisonment for debt in *all*, but only in certain particular cases therein described; that the cases to which the bill was not intended to apply, were those of contract, in the suits for the enforcement of which contracts *bail* had been originally required. In all such cases, the writ of *capias ad satisfaciendum* might still issue, even if this bill became a law. Now, said Mr. T., very many cases of contract broken, might, and must, be prosecuted, in courts of chancery only; and, according to the rules of proceeding in these courts, bail could not be required in any case therein instituted. The effect of the second section of the bill was, however, to prohibit the writ of *capias ad satisfaciendum*, and all other process under which the body of the debtor might be taken in *all cases of contract* in which bail had not been originally required. The provisions of the bill, therefore, were inconsistent with its object. The case of a lost bond was referred to as fully illustrative of this position. There could be no reason assigned why the debtor by bond which was not lost, might be imprisoned to satisfy the judgment of a court of law rendered for the amount of his bond; and that the debtor, where bond was accidentally destroyed, should not be imprisoned to satisfy the decree of a court of equity for a like sum. In either case, the obligation upon the debtor, and the rights of the creditor, after the judgment at law, or the decree in equity, were the same, and the same means of enforcing these rights, and the performance of these duties, ought to be allowed in both. But, under this bill, a difference, said Mr. T., is created, for which I can see no good reason.

Mr. JOHNSON, of Kentucky, said, that he was called upon, in consequence of the objections made to the passage of the bill, by the two gentlemen from Delaware and Virginia, to vindicate the measure under consideration. It had

been said, that we had not brought forward any cases of hardship which proved the necessity of this measure. Is it necessary to detain the Senate with the search after, and the reading of the jail records of the different States, or of the United States, to prove that he who has power in this respect will abuse it? Human nature was too well known to require him to illustrate the principle, that equal and just laws were required to exorcise the increase of inordinate passions. The jail records of several States, at the last session, had been adduced and relied upon to prove the necessity of this measure. The fact was established, and the fact can be established, that there are unreasonable and unjust creditors, as well as fraudulent debtors; the bill was intended to restrain the one and to detect the other. The case of the debtor recorded in Holy Writ, who was forgiven his whole debt, and the next moment put violent hands on his debtor, and cast him into prison, was recorded to illustrate the disposition of man, and to show what he has done and what he will always do, when vested with power. If the gentleman from Delaware had the patience of Job, that patience could be exhausted by a recital of cases in which the same cruel and unfeeling disposition was manifested, and by which the misery of thousands had been increased, without any corresponding benefit resulting from such a course.

Mr. VAN DYKE replied: It was not my intention, sir, said he, to enter at large into the discussion of the merits of this subject; nor shall I now do so. The few remarks which I submitted, were designed merely as an apology for requesting the yeas and nays on the final question, about to be taken. But, sir, it now becomes proper for me to say a few words in reply to the gentleman from Kentucky. That gentleman, with his usual zeal, has argued as if the rejection of this bill by the Senate gave the creditor a power to imprison, at his will and pleasure, an honest but unfortunate debtor. If that were the question, there would probably be no voice lifted up within these walls against the bill. No man would be more willing than myself to abolish imprisonment for debt, on such conditions, and under such provisions, as should oblige the debtor to make a full disclosure and surrender of his property for the use of his creditors. Such a provision prevails in most of the States, and relieves debtors under State Court process. Humanity would bind the creditor; honesty and justice would constrain the debtor to assent to this proposition. I am not one of those who would expect a poor man to pay his debts by going to prison; but I have seen enough of man to believe that, with many, who have the means, it requires something beyond persuasion to make them pay their debts. If, then, I am asked whether it is just that a creditor should confine the person of his debtor, who has committed no fraud, and is unable to pay? I answer, No; such conduct would violate the common principles of hu-

manity, and would justly fix a stigma on the character of him who should evince so merciless a disposition. But, if I am asked whether, under the idea of relieving an honest debtor, I am willing to adopt this system, by which a creditor who has loaned his money to a dishonest man, who, disregarding his promise, refused to restore it, though he has ample means to repay—shall be embarrassed in prosecuting his claim—be put to unnecessary expense, and be involved in endless litigation with such debtor? I answer, No. Those moral rules and precepts to which allusion has just been made, have no application to such a case; nor would I lend to such a debtor any facility to baffle his just creditor. But what does this bill require of every creditor against every debtor, before the debtor shall be put to the small inconvenience of giving bail, or, in plain language, entering into security, not for payment of the debt, but simply to appear and abide the judgment of the court? Read the first section—two oaths, in the first instance, must be taken by the creditor—first, he must swear to the amount of his debt; 2dly, that he has *reason to believe* the defendant intends to remove, &c. The first may generally be in the power of the plaintiff to do, satisfactorily; but the second is too indefinite, in my opinion, to be made the subject-matter of a solemn oath.

Sir, I have a repugnance to the multiplication of oaths unnecessarily, in the administration of justice. They are traps for men's consciences, and have a tendency to lessen the reverence which ought everywhere to prevail, for that all-important and solemn obligation. What man, regarding his reputation, and possessing the delicate feelings of an honorable mind, would feel at liberty to take that oath, under the penalty which must immediately follow? Read the following lines: "on the return of the writ, the defendant may contest the allegations of the oath, in such form as the court may prescribe," &c. The tables are now turned, and the plaintiff is immediately to be arraigned before the court by his debtor, for swearing to what the debtor says is untrue, and this issue is to be gravely tried before the court; and the plaintiff must then make out, *by proof, that he had reason to believe*, &c. If he fail to do so, the defendant triumphs in his discharge. Sir, it is mocking a creditor to invite him to enter the lists with a cunning, fraudulent debtor, on these terms. However strong the belief of the creditor, he would be unwilling to engage in such a contest; and the consequence would be, that the fraudulent debtor would escape from the suit without bail, and, at the end of it, laugh at the vexation of his creditor. This is the operation of a part of the machinery to be put in motion by the bill to abolish imprisonment for debt. Unless my optics deceive me, every part of the system will be found to operate against the just rights of creditors, and to involve them in litigation and expense. Thus, by the fourth section, even

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*Petitions from Foreigners.*

[SENATE]

after judgment, if plaintiff shall make oath that he has ground to believe defendant has fraudulently concealed his property, another denial by defendant produces another trial; and if plaintiff fails to prove the allegation to the satisfaction of the jury, he must pay costs. These remarks on two sections of the bill, will, I trust, illustrate the proposition which I advanced, that the bill is calculated to embarrass creditors unnecessarily, and to involve them in new scenes of litigation with their debtors; and subject creditors to expense and cost, unprecedented in any court of justice in this happy country.

Mr. MACON, of North Carolina, said that he should oppose any bill that deprived any man in the United States of a right; but did not understand how this bill would have that effect. This bill would be well understood, and would be taken into consideration in all contracts made after the 4th of July next; therefore, he could not understand that any right was touched by the bill. The law gave notice, and all persons making contracts after the time fixed by the law, would do so with their eyes open. They would know the remedy they must apply, and, therefore, on this point, no difficulty could possibly occur. Everybody was agreed upon the abstract principle, that an honest man should not be imprisoned for debt, but objections were made to the details of this bill for its accomplishment. The real question, Mr. M. said, was, whether this bill was better than the existing system? The gentleman said that there were not many persecuting creditors; but if there were only ten in the nation, who thought they had a right to persecute, not to prosecute, he would endeavor to deprive them of that power. Creditors, somehow or other, generally contrived to find out the condition of debtors. There would be no more difficulty after this bill was passed, in ascertaining their condition, than there is now. No difficulty could, in his opinion, possibly arise. Mr. MACON concluded by saying, that he did not know what those, who were not professional men, were to do on this occasion, when the gentlemen of the bar differ in opinion on the subject of the details of the bill. For his part, approving of the principle of the bill, he should vote with those who were in its favor.

On the question, "Shall this bill pass?" the yeas and nays were then taken as follows:

YEAS.—Messrs. Barbour, Benton, Bouigny, Branch, Eaton, Elliot, Findlay, Holmes of Mississippi, Jackson, Johnson of Kentucky, Johnston of Louisiana, King of Alabama, Lloyd of Massachusetts, Lowrie, Macon, Smith, Talbot, Taylor, Thomas, Van Buren—20.

NAYS.—Messrs. Barton, Bell, Brown, Chandler, Clayton, Cobb, D'Wolf, Dickerson, Edwards, Gailard, Hayne, King of New York, Knight, Lloyd of Maryland, McLean, Mills, Noble, Palmer, Parrot, Ruggles, Seymour, Tazewell, Van Dyke—28.

So the bill was rejected.

TUESDAY, January 18.

*Petitions from Foreigners.*

Mr. FINDLAY presented the petition of William Brandt & Co., merchants of the town of Archangel, in Russia, owners of two vessels, and subjects of Russia, by S. Chew, of Philadelphia, their attorney in fact, praying that certain additional tonnage and discriminating duties paid into the custom-house, at New York, by their agent, on the said ships and their cargoes, may be refunded.

Mr. EATON objected to the petition being received, on the ground that the subject of another power was not permitted to approach Congress by petition. A foreigner who had any claim to bring forward against the United States, ought to apply to the Secretary of State, and if he believed that it was correct, but had no sufficient authority to act, then it should be brought before Congress; and this was the course the petitioner ought to have pursued.

Mr. FINDLAY, in answer, observed that, although the constitution only recognized the right of petitioning in citizens, yet there was nothing prohibiting receiving petitions from foreigners. There was at this time a bill on the table, granting the benefit of the patent laws to an alien; and, if petitions of one kind were received from aliens, and others rejected, he did not see how the distinction was to be made. Must a committee be formed for the purpose? This petitioner had been informed by the Secretary of the Treasury, there was no other remedy but to apply to Congress. A similar petition had been received last year, but had not been acted on for want of time—and why was it to be rejected this year?

Mr. KING, of New York, said that the Government of this country was for the people of this country; and if foreigners had any communication to make, the minister or consul of their nation, was the proper person from whom it was to come. With regard to the case mentioned, in which the patent law had been extended to an alien, that application might be made by any gentleman whatever. The intercourse between Russia and this country was through the Executive power. He wished to know if it was customary for Americans to go to England, and present petitions there? No. They could not be sustained for a moment there.

Mr. HOLMES, of Maine, recollected one such case, and a very recent one too. A citizen of the United States, General Boyd, applied to the British Parliament, by petition, for relief, for a certain cargo which had been confiscated at the Cape of Good Hope. Much discussion took place on the subject, but finally a bill passed Parliament for his relief, and he received a considerable sum of money. The General was not a British subject. He was an American citizen, and fought in the Revolutionary war. They often heard of petitions from foreigners; and if the statement of these petitioners was

found correct, he did not see why they should not be relieved.

Mr. SMITH did not recollect any case directly in point. The Secretary of the Treasury might have given the advice mentioned by the petitioner, and he was not at all wrong in so doing. The money had been paid into the Treasury, and, if so, could not be returned to the petitioners by any authority of the President or officers of the Government. An act must be passed for the purpose. This memorial was not a memorial from the merchants in Russia, but came regularly before the House from a citizen, the agent of a foreigner, and ought to be received.

Mr. LANMAN was in favor of committing the petition, but not in consequence of the precedent of Gen. Boyd. It would be found that the General presented himself before the king in council, or Parliament—the petition was presented in the character of a British subject serving in a military capacity in India, claiming certain immunities granted him to export salt-petre. He thought the dignity of the Government, and their own dignity, sense of duty and self-respect, required that they should accept this petition. He was aware of many petitions having been received from foreigners, among others that of Col. Calava, of Florida.

Mr. LLOYD, of Massachusetts, did not attach much importance to the precedent of Gen. Boyd, because he thought they were capable of judging for themselves. Gen. B. did come before Parliament as a petitioner, but it was in the character of a Mahratta chieftain—he could not have presented a petition as a citizen of the United States—he did not believe there was any law existing in the United States requiring that an alien should be naturalized before he acquired the right of petitioning. This petitioner had pursued the proper course, and ought to be heard.

Mr. TAZEWELL submitted somewhat at large his views of the proper course to be pursued by foreigners in seeking favors or redress from an alien Government; the true distinction to be made between citizens and aliens by Government in receiving their complaints; what was due to courtesy on the one hand, and to right on the other, &c. But Mr. T. was heard by the reporter too indistinctly to venture a more particular statement of his remarks.

The petition was received, 21 rising in favor to 12 against; and the petition referred to the Committee on Finance.

WEDNESDAY, January 19.

#### *Yazoo Land Claims.*

The Senate took up the report of the Judiciary Committee, unfavorable to the petition of Ebenezer Oliver and others, Directors of the New England Mississippi Land Company.

[The petitioners appeal from a decision of the Commissioners appointed to carry into effect the

compromise between the United States and the holders of Yazoo lands, under the act of 1814. The report sets forth: That, before the Commissioners, the petitioners, as trustees of the New England Mississippi Land Company, claimed, as the persons entitled to the *one million five hundred and fifty thousand dollars*, directed to be issued to the Georgia Mississippi Land Company; their claim to indemnity for 957,600 acres, amounting to \$180,425, was resisted in behalf of the Georgia Mississippi Company, on the ground that the consideration money for said lands had not been paid, and that, therefore, they were, in equity, entitled to the indemnity provided by the act of Congress. The Commissioners decided in favor of the Georgia Mississippi Company, and the 180,425 dollars were deducted from the amount awarded to the New England Mississippi Land Company, and distributed as follows: \$50,608 48 to individual members of the Georgia Mississippi Company, who had released to the United States, under the act of 1814, to whom the same has accordingly been paid; \$79,816 52 was reserved to the United States, as being the shares of those claimants, who, not having been paid the consideration money by the persons who had purchased of them, claimed to be still the legal and bona fide owners of said lands, and, as such, had availed themselves of the provision of the repealing act of the State of Georgia, and obtained the repayment of the consideration money by surrendering their titles to the State. The petitioners object to this decision as erroneous, and they ask to have the \$182,425 paid to them by the United States, or their release to the extent of the 957,600 acres cancelled, so that they may assert their title to the lands in a court of law.]

The committee, for the reasons which they set forth, declare the prayer of the petition unreasonable, and that it ought not to be granted.

Mr. MILLS moved to reverse the decision of the committee, so as to declare the petition reasonable; and followed his motion with a speech of considerable length, and much earnestness, in support of it.

Mr. HOLMES, of Maine, (a member of the Judiciary Committee,) replied to Mr. MILLS at equal length and earnestness, in support of the report of the committee, and against the petition.

Mr. LLOYD, of Massachusetts, followed, in support of the petition, and against the report.

Mr. TALBOT, (a member of the Judiciary Committee,) followed Mr. L. on the same side, and addressed the Senate more than half an hour, in support of the justice of the petition, and against the report.

The debate had continued between two and three hours, when Mr. TALBOT had concluded; and Mr. VAN BUREN, (chairman of the committee who made the report,) expressing a desire to submit his views in its support, asked to be indulged until to-morrow, as the hour was now late, and moved to lay the report on the table; which was agreed to.

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*Suppression of Piracy.*

[SENATE.]

THURSDAY, JANUARY 20.

*Massachusetts Militia Claims.*

Mr. LLOYD, of Massachusetts, stated that the Senators of Massachusetts had received certain resolves of the Legislature of Massachusetts, now in session, in reference to the claim of that Commonwealth for the services of the militia of that State, during the late war; praying the speedy adjustment and payment of that claim. And instructing the Senators of the United States from that State, to present the said resolutions to the Senate. In pursuance of which instructions, he asked leave, in behalf of the said Senators, to present the resolves accordingly; observing, that, as the subject to which they relate is now before the House of Representatives, after having undergone the investigation of an able committee, and would, he trusted, shortly come before the Senate in an acceptable shape, in the form of a bill for the payment thereof, he would propose, that the resolves should be received, read, and, for the present, lie on the table.

The following resolve was then handed to the Chair, read, and laid on the table, viz:

*Commonwealth of Massachusetts,*

*Resolved,* That the Senators of this Commonwealth, in Congress, be instructed, and the Representatives requested, to urge, at their present session, the adjustment of the claim of Massachusetts on the Government of the United States, for disbursements necessary in the Commonwealth's defence, during the late war; and that the admission of its justice and validity, so far as it has been expressed by the authorities of the National Government, is duly appreciated.

Attested by the President of the Senate of Massachusetts, the Speaker of the House, and the Governor of the State.

Mr. HOLMES, of Maine, and Mr. CHANDLER, respectively presented similar resolutions of the Legislature of the State of Maine, which were also read, and ordered to lie on the table.

*Suppression of Piracy.*

The Senate then, according to the order of the day, proceeded to the consideration of the bill, reported by the Committee of Foreign Relations, for the suppression of piracy. The bill having been read through—

Mr. BARBOUR (Chairman of the Committee on Foreign Relations) commenced his remarks by saying: In the discussion of this subject, I do not know the precise course that ought to be pursued; for, whilst I hear on one hand, in conversation, that the measures we have adopted are too strong, on the other I am told that we have not proceeded far enough. I presume to hope, on this occasion, the truth lies between the two, and that, on the whole, the committee have been fortunate in the means they have suggested to put an end to the atrocious practice of piracy. Fortunately, or perhaps I should say unfortunately, for the facts disclosed are of the most melancholy description, there is no room to doubt the statements that have

been made. Our commerce has too long been spoliated by these brigands of the West Indies, and our citizens have suffered every species of outrage from them, not only in the destruction of their property, but they have been cruelly tortured and most barbarously murdered. It is equally true that the means which have been hitherto resorted to have been insufficient to put a stop to it. And I believe it is equally true that the continuance of the evil is to be ascribed to the fact, that these bandits find an asylum in the Spanish possessions in the West Indies. It is equally true, that the information we received from our commanding officer, in that quarter, stating that piracy was at an end, and a piratical sail was no longer to be seen, is incorrect. It has gone on, gaining strength from time—its horrors have increased, instead of being diminished, and the numbers of these enemies of the human race have been swelled by the most profligate wretches—the refuse of all nations. The nautical means employed are not sufficient to effect the desired end; and nothing short of the pursuit of these villains on shore, promises any thing like an adequate remedy. The pirates are not only to be found at sea, but the whole island of Cuba is infected with this moral leprosy, from head to foot—all have participated in the spoil thus villainously acquired, nor will it cease till the United States adopt some strong measures to make them feel the consequences of the measures which they have not only tolerated, but assisted in.

These are the facts of the case, and the inference drawn from them; and I presume there can be no difference of opinion on the subject in the Senate, that it is necessary that something should be done, and that it should be done speedily and efficaciously. The only difference that can possibly exist, may be, as to the means which ought to be employed; for, surely, there can be no doubts as to the expediency of stretching out the arm of the nation, with all its resources, if necessary, to put an end to piracy. The committee did not portray, in the dark colors of which the subject is susceptible, the outrages and atrocities committed by these brigands. They did not exhibit the American citizen suspended from his own yard-arm, or weltering in his blood on his own deck, invoking in vain the aid of that flag, as well the pledge of your protection as the emblem of your sovereignty. They did not do so, because they thought that the naked facts, with the atrocious circumstances connected with them, would be sufficient to excite the indignation and horror of every citizen. They, therefore, left the subject to the general conception of every member of this body, without wishing to bring out the whole of the dark disclosure. On this account, some may be induced to believe that, in the means we have recommended, we have proceeded too far, but in my estimation, we have not, nor do I believe we could have gone too far. These people, by a singular combination, unite two of the most



atrocious crimes that infest society, the slave trade and piracy; and Sodom and Gomorrah can no longer claim the infamous pre-eminency in crime.

There are others who think we have not gone far enough; but if they had said we ought to have recommended extermination, I should not have thought it too strong. They are the common enemies of the human race. The whole island is participating in the most atrocious crimes that can be perpetrated by man, and against these, as enemies of the human race, extermination might with propriety be denounced. The committee had no desire to inflame the passions, nor have I; and I am confident that no labored coloring is necessary to make every member of this body feel as powerfully on this subject as I do.

Sir, I will now proceed to take up the bill, section by section, to satisfy the Senate as to the propriety of adopting the means proposed.

The first section proposes building a number of ships, not exceeding ten, of a particular force. In relation to this clause, I wish to remark, that it is the copy of a bill that passed last session for building these ships. It was a measure strongly recommended by the intelligent head of the Navy Department. These vessels were to answer two purposes: they were not only calculated for suppressing the existing evil, but they would be an addition to the navy, to be used whenever a force of this description could be of service, and as a means of keeping down this tremendous evil when it was once down. It was then argued, that it was more prudent to buy than build, and the most intelligent were of a contrary opinion, and experience warranted it. It is unnecessary to travel further on this ground, since nothing has since occurred to occasion a change of opinion on this subject, but, on the contrary, the duration and the increase of the evil has tended to confirm it. The House of Representatives had not time to consider it. It was passed over with many hundred other subjects, but there was never any thing unfriendly exhibited, as far as I am advised, to its passage.

The second section provides for the landing of our forces in fresh pursuit of pirates, in the territory.

I believe, as far as regards our right to adopt this measure, there is no question that it will be yielded, on all hands, that it is lawful to enter the territory of any power in which pirates have taken refuge. Where a neutral power permits the enemy of an established Government to enter its territory, it instantly creates a right, on the part of the opposing power, to pursue, because, in giving them refuge, they abandon their neutrality. Much more so, is the right unquestionable as regards pirates. They are the common enemies of the human race, towards whom there can be no neutrals; therefore, it is perfectly lawful to pursue them into any territory into which they may have taken refuge, and any nation, who should assert that

their rights had been violated by such a pursuit, would make themselves parties in their crimes, and become obnoxious to all civilized Governments, for the refuge afforded to the enemies of mankind.

If there be any doubt, however, on any man's mind, I will avail myself of the opinion of one of the most distinguished jurists of this country, and when such authority is to be had, I prefer it to all other. This gentleman was at the head of the Navy Department when instructions were given to Commodore Porter, when he proceeded on his first cruise on that station, and who now occupies, with so much credit to himself and usefulness to his country, a seat on the supreme bench. After sanctioning the principle above advanced, as to entering the territory of neutrals by belligerents, he proceeds to state that, in the case of pirates, there is no neutral party; they being enemies of the human race, all nations are parties against them, and therefore the right of entry, into any and all territories, in pursuit of pirates, is a clear principle of international law. In addition to this, you have the message of the President of the United States, stating, that this course is necessary to reach the evil, so that there can be no doubt as to the expediency of the measure.

I cannot too often endeavor to impress on the minds of the Senate, that these brigands are not only formidable by sea, but they find abettors by land. Let humanity blush on the declaration of the fact; they find countenance not only amongst the refuse of the population of Cuba, but amongst the merchants, the planters, and, what is more humiliating, amongst the constituted authorities of the island. Every place throughout the island, we are credibly informed, is contaminated by this deadly sin. Sir, the idea of a constituted or local authority, lending his aid to obtain redress for the aggrieved, is idle. The testimony of Randall, which I think is unquestionable, is sufficient proof that the local authorities, instead of putting down this evil, receive their share of the wages of iniquity. We are told these brigands rarely venture out in large vessels, but hover round the shores and the country, which, from the number of creeks and inlets, is peculiarly adapted to the objects of these marauders; and, when they are pursued by the American squadron, they find refuge on shore; and, where is there a shadow of evidence to prove that they have been taken up and punished for their crimes, and for the sufferings they have caused? There is none. You must cause vengeance to reach them—you must teach them there is justice still on the earth; and, although their own Government connives at their iniquity, there is another country strong enough to seize them in their recesses, and drag them to condign punishment. If we travel further into the case, we shall see the depth of depravity to which human nature can be reduced. These wretches, instead of being detested, are publicly

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justified. Yes, sir, it is pronounced an honorable trade; and what are we to expect from beings who justify such deeds as these? There is another circumstance which is very strong indeed; even General Vives himself, whom we exempt from participation in these deeds of iniquity, is still afraid to execute the authority with which he is invested. These brigands are seen in the public streets, mixing with the most respectable people of the place—and why not? They are all engaged in the same abominable traffic; and although those who have been so fortunate as to escape the murderer's poniard, have been able to point out in the public streets a man, saying, "There is one of those who robbed me and murdered my companions," he is told to beware lest the poniard, still reeking with the blood of a brother, shall shed his own.

Sir, I have heard it stated that the territorial rights of Spain would be violated, were we to adopt the measure recommended in this section. That it is a terrible thing to violate the rights of a nation, and draw on war, and all its calamities. But Spain has obligations to perform as well as rights to assert. If Spain had acquitted herself of the obligations imposed on her by the laws of God and man, and brought to punishment those monsters who find refuge in her territory, and to which she has been so often urged by our Government in vain, I would admit, that any attempt to enter her territory, as it would be without necessity, so, also, it would be without right, and unjust. But, under existing circumstances, what can Spain do? The committee find that Spain is unable to fulfil her social duties, and they put this charitable construction on her neglect of them. If she is able to put a stop to those outrages, and yet still permits them, she makes herself a party in the crime, and no measures that the United States could adopt would be too strong. We must act on one of these facts—connivance or inability. To act on the latter, is for the benefit of Spain. And what can Spain complain of? The United States has thrown herself on her own resources to do that which Spain ought to do, but finds herself unable. Sir, let us bring this case to private life. Suppose the habitation of an individual to be intruded on by a ruffian, and he is without strength, and unable to resist him. A neighbor who had been annoyed by this same ruffian, seizes him and turns him out; can the weak man complain? The same principle applies here. It is a misfortune, but not a crime, in a nation, that it is incapable of doing itself justice. Spain cannot acquit itself of its obligation in driving out these bandits. They carry on war with all mankind, and all mankind ought to arise to relieve a neighbor that is unable to assist itself.

But, sir, I beg to observe that this clause is limited to a fresh pursuit. When these wild beasts are started from their lairs by the American squadron, and wish to conceal themselves,

then making fresh pursuit, authority is given to the officers to pursue them, capture them, and bring them back, or leave them in the island, if assurance is given that they shall be brought to condign punishment. I am now alluding to the caution with which this power is given. It is not a general privilege to enter the country in pursuit of pirates, because the ultimate consequences of that might be mischievous. But if, in a *fresh* pursuit, it is necessary to apprehend them, then the authority is granted them. With this caution, no difficulty will be created; and, considering the exigency and extraordinary nature of the case, and the outrages committed, there cannot be any difference of opinion in the Senate as to this clause of the bill. Surely, those do not argue well, who say that a measure should not be adopted, because it *may* ultimately produce mischief. This objection lies against any and every measure. If power is pushed too far, there is authority sufficient in this country to punish those who should be guilty of a wanton abuse of power.

The third clause is that authorizing blockade, under particular circumstances.

This clause has been particularly objected to, more especially on the ground of right.

Sir, the committee, in their consideration, have assumed the ground that we have had ample cause for war against Spain, according to the law of nations. It is expressly laid down, that, if a nation refuses to repair an injury committed by its subjects or citizens, it becomes instantly obnoxious to the aggrieved party, and affords just ground for retaliation. On this principle, Spain stands obnoxious to the United States for every outrage committed on its citizens by her subjects. The injuries have been inflicted, and redress demanded in vain. If, then, this is true, unquestionably we have sufficient ground for war with Spain. A just occasion to declare war leaves to the injured party a right to modify, according to his pleasure, the application of his force so as to effect his end. Hence, there are various steps, having reparation for their object, short of war—steps dictated by reason and humanity, and which not unfrequently produce the desired result, without the calamities of war, such as an embargo, letters of marque and reprisal, and, I will add, a blockade: for I can see no reason applicable to the former, that will not apply with equal force to the latter. If either of these measures succeed, the cause of humanity is promoted. The argument that nothing shall be done which is not justified by precedent, is at war with the condition of human kind, the current of whose affairs is one continued vicissitude, every age presenting its own incidents. From whence have you derived the precedents forming the law of nations? They had their origin in the right common to us. They rest on the maxim equally inculcated by jurists and by reason, that right goes hand in hand with the necessity and the exigency of the case. In self-preservation, you have a right

to resort to such measures as necessity dictates. On this principle our ancestors acted. Their actions became precedents, and precedents authority. And, give me leave to inquire, At what epoch was posterity disfranchised? At what point of time did they forfeit the privilege of employing means corresponding with a new and necessitous occasion? Selden, the English patriot, was asked, by what authority he justified opposition to tyranny? He replied, he was not aware that there was any statute upon the subject, but it was a usage in England. When our fathers, animated by the love of independence, and of liberty, rose, in their might, to break their colonial bondage, and to establish our free and happy institutions, had some admirer of precedent inquired on what ground they justified their measures, appealing from musty records and established precedents, they would have pointed to the original source of all human authority—the law of Nature, and which, when unpolluted, guarantees the self-preservation and happiness of man.

He, therefore, who refuses to proceed, if there be not a precedent on the files, separates himself from the mighty and resistless current of human affairs, and becomes partially barbarous. Reason and necessity compel us to yield to its endless changes. Although, therefore, no authority could be appealed to to justify this measure, yet, if it be obviously necessary, to save our property from destruction, our citizens from massacre, and to bring to condign punishment the most atrocious of mankind, enemies of the human race, that necessity would be a sufficient justification.

FRIDAY, January 21.

*Suppression of Piracy.*

The Senate again proceeded to the consideration of the bill "for the suppression of Piracy."

Mr. TAZEWELL rose, and moved to strike from the bill the third section thereof, which is as follows:

"*And be it further enacted*, That, if any of the said pirates should escape from the fresh pursuit of the commanding officers and crews of any armed vessel of the United States, and find refuge in any of the cities or ports on the said island of Cuba, or other islands aforesaid, the President of the United States, on being informed of the fact in a manner satisfactory to him, of its authenticity, shall be, and he is hereby, authorized, at his discretion, to declare the said port or city to be in a state of blockade, and shall cause the same to be invested by the naval force of the United States, till the said pirates shall have been secured and punished by the authorities of the said island, or until satisfaction shall otherwise have been made, whereupon he shall deem it just and expedient to discontinue the said blockade."

In support of this motion Mr. T. said—

Mr. President: In proposing this measure, I do not by any means wish to be considered as being opposed to the great object of the bill. So far from opposing it, there is no member of

the Senate, no member of the committee, not even my honorable friend and colleague, to whom so much is due for the zeal and ability he has displayed on this occasion, who is more favorable to the application of every *proper* means of obtaining the object than myself. Sir, it is precisely because I do not consider the means proposed by the third section of the bill, to be either proper or sufficient to obtain the end the bill has in view, that I have proposed to strike it out. It is unnecessary to recite again the phrases of this section. It is sufficient to observe, that its object is to authorize the President of the United States, under certain circumstances, to institute a blockade of certain Spanish ports.

The advocates of this measure, at the very moment they recommend its adoption to the Senate, acknowledge it is a war measure. They acknowledge, moreover, that the United States maintain, at this moment, the most cordial relations of amity, not only with this power, but with every nation upon the globe, and they declare that it is not their purpose to change, in any way, these relations of peace and amity, whilst they practise this measure of war. The argument my friend and colleague urges on this subject, is this: "We have just cause for war against Spain, and therefore, although at peace ourselves, we have a right to practise against her this war measure." It is not necessary, sir, for me, at this time, or in this place, to inquire whether the proposition, which asserts we have just ground of war against Spain, is correct or not: but I think I am authorized in saying, if the statement my friend and colleague made yesterday is well founded, that the existence of piracy within her dominions, is ascribable to the *weakness* and not to the will of Spain, it belongs not to a just or generous people to declare this weakness a just ground for war. *Parcere subjectis, et debellare superbo*, was the maxim the poet teaches as that which was inculcated by the wisdom of the dead upon the magnanimous enterprise of the living, in past times; and trust me, sir, whenever we depart from the course this advice recommended, we shall lose much of that moral force which constitutes the great power of the people of the United States at this moment, while we shall not add a single sprig of laurel to the garland which now adorns our brow. Suppose we allow there is just cause of war with Spain; does it follow that any obligation is thereby imposed on us to exercise the right thus acquired? Because a nation has a just cause of war, is it to be argued, that she must, of necessity, engage in it? She surely may waive the right of waging war, if she thinks proper so to do; and when she waives this right, it must be admitted its incidents and ~~more~~ consequences follow the right so waived, and she can no longer claim the shadow, after she has voluntarily waived and abandoned the substance which produced it.

If this be so, it is not correct to argue that,

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because we have just cause of war, we may, in times of peace, adopt a measure which belongs to war alone; and, least of all, does it result, that, while you are maintaining these relations of peace and amity with all nations, you are at liberty to put in practice measures of war, which will not fall on the offending party alone, but on the innocent and meritorious only. Here, then, exists the first and great difference between the advocates of this measure and myself. They say that the measure proposed is designed to act, and must act, "upon the guilty alone." In my view, it can only affect the innocent and meritorious; and, if this position be established to their satisfaction, I venture to hope the advocates of the bill themselves, when they find that this measure, instead of promoting the end they had in view, is calculated to produce an effect diametrically opposite, will unite with me in the effort to expunge this section.

I say, sir, that this measure, authorizing the Executive to institute a blockade, can operate on none but neutral states. A war measure practised in peace is an anomaly, such as history nowhere records, and where parallel even pre-science has never yet foretold. We have no standard, then, by which to try its character or ascertain its effects, and there is no reasoning that can be applied to this nondescript. I think, however, I shall approximate the truth in contending, that a blockade, in time of peace, can confer no more right, and impose no more duties, than a legitimate blockade exercised in war, by one of the belligerent parties. I assume this as a postulatam, then, that this war measure, practised in peace, places all parties in the predicament a similar measure practised in war would do. I know well, sir, what are the rights and duties given and imposed by a blockade declared in time of war, but, in relation to this peace measure, I am ignorant of its consequences, and can bring it to no other standard than that I have thus stated. I can reason on it in no other way than by supposing that this blockade, instituted in time of peace, gives to all the parties, on whom it may operate, just the same rights and no more, than a blockade in time of war would do.

If it be contended that it gives more, I call upon its advocates to show from whence they derive the excess. I might, perhaps, contend that it did not confer so many rights, but I am content to concede this, and to place the two measures on the selfsame footing.

Mr. President, wherever war exists, all the inhabitants of the world must occupy one of two relations: either they are belligerents, or they are not. In the former case, there can also exist but two relations: those claiming and practising the right of blockade, and those against whose ports the right of blockade is directed. This blockade, if it acts at all, must, therefore, operate on one of three parties: 1st. On the citizens or subjects of the nation declaring the blockade; 2dly. On the citizens or sub-

jects of the power whose port is blockaded; 3dly. On any others, that is to say, on neutrals.

Let us now consider the case of citizens or subjects of the blockading nation. It has never been said, it has never been thought, it has never been even dreamt, I believe, by any, before this day, that a belligerent blockade ever did or ever could act upon these.

We have been told of a blockade by statute, but my honorable colleague is mistaken, I believe, when he traces the rights and duties it creates to this source. No, sir, the power to declare it is derived from no such paltry municipal spring; it flows directly from the great and pure fountain of the public law. And when so derived, its influence extends over all upon whom this high law acts, that is to say, over the whole civilized world.

Deriving its powers thus from the law of nations, how idle would it be for a Government to invoke the aid of such powers when it would act upon its own subjects! Sir, the relation which subsists between sovereignty and subjection, between a nation and its own people, is that which enjoins and requires all power on the one hand, and all subjection on the other; and the only doubt which ever has, or ever will exist, is, in what hands this unlimited sovereignty, demanding unlimited obedience, might most properly be confided. We say, (and, I think, say truly,) it can be trusted nowhere with propriety but to the people. But whether it resides with an Autocrat, with a King, Lords, and Commons in Parliament assembled, or in the People, wheresoever it is found, it is equal, and it is equal only because it is supreme.

The language of this sovereignty, addressed to its own subjects, must, therefore, ever be the language of command, "*sic volo, sic jubeo; stet pro ratione voluntas.*" And this language we, the people of the United States, acting in our sovereign capacity, are as much authorized to address to our own citizens, as the most puissant sovereign on earth is authorized to employ it towards his vilest serfs. For our sovereign rights are not less than his: they are both supreme.

If, then, you wish to prevent your people going to the island of Cuba, pass an act to that effect—an act of Congress, with sufficient sanctions, will secure the object. Do they violate it? Enforce your municipal regulations by municipal means; nobody can complain of this, because they are your own people, and you may govern them as you think proper. But, it may be asked, what will you do with one of your people who should attempt to violate this blockade? Will you not capture him? Yes, and condemn him too—(I am speaking of a war blockade, with which this peace blockade must be compared)—we do not condemn him, however, for violating the blockade; with this he has nothing to do; we touch him on a spot far more delicate; we strike a chord that reaches to his very heart; we touch him on his allegiance, and say that he is a party holding intercourse with the enemy, and endeavors to give

them aid and comfort. Your power over him is not then derived from the public law; the public law cannot operate on him; it is a mere municipal power derived from your own municipal code, directed against a traitor who eludes and violates the municipal authority.

Do you want further evidence of this? Do you want to be further satisfied, that the right of blockade is never exerted by a nation against its own citizens? You will find it in these considerations. Would you not capture him before the blockade began, or after it was raised, or even during its continuance, if he is found anywhere engaged in this purpose, although not seeking to violate it? Yes, and the principle is always the same; you always capture and condemn him as a traitor, holding intercourse with the enemies of his country, contrary to his allegiance, and never as a mere blockade breaker. As, then, the institution of a blockade produces no new effect upon the subjects of the nation declaring it, will it act upon the power whose ports are blockaded? This is a fallacy still greater than the other. In war, you capture and condemn your enemy, it is true, not because he is attempting to break the blockade, however, but because he is your enemy. You assign no other reason but that. You say he is your enemy; therefore, you have a right to seize his person as well as his property, wherever you find either out of the protection of a neutral state. This right existed before the blockade was instituted, and exists in equal force after it is taken off; and during its continuance, wherever you find your enemy beyond the limits of a neutral state, although not attempting to violate your blockade. If so, a blockade which bestows no right, and imposes no new disability, cannot be considered as acting in any manner directly upon him; your right of action on him is derived from public law; it was perfect the instant war existed between you, and it is a right entirely independent of blockade.

Now, Mr. President, if the blockade does not act on your own citizens, or on your enemy, on whom can it act? If it act at all, it must act upon none but neutrals. I know very well, sir, that, although the *direct* action of a blockade is upon the neutral, yet the consequences may be felt by the enemy, and perhaps by yourselves; but that is merely an incident, a mere consequence, of the direct action, and you entitle yourself to the chance of inflicting this indirect injury upon your enemy, by entitling yourself to the right of acting directly upon neutrals. If such be the operation of a blockade, instituted *jure belli*, as fixed and settled by the public law, and if a peace blockade can bestow no other rights, then, as it is a measure designed to act not against the United States and Spain, but upon all the other nations of the civilized world, the question is, Are we prepared thus to act upon them? The advocates of this measure seem to have looked only on one side of it; but this is not right. The effect of blockade is, to shut out all who are out, and keep in

all who are in. It prevents egress as well as ingress. The neutral can no more go in than he can come out; and the only exception to this rule is, that he may, if he chooses, quit the port the moment he is notified of the blockade, provided he leaves it in the condition he was when that notice was received, in ballast or half loaded, if such was his situation at that time. And if he dares to put the smallest article on board after he is notified, he then acts as an enemy, by assisting the enemy in his commercial purposes, and subjects himself to confiscation thereby. Perhaps the advocates of this measure can explain why it is that neutrals are thus to be made to suffer, all of whom feel as we feel upon this subject, and some of whom have done their utmost to put down piracy, and whose efforts I grieve to be compelled to say, have been much more efficacious than our own.

I can imagine many arguments that might be suggested by ingenuity in favor of a blockade of ingress, but for a blockade of egress there can be none.

When you see your friend about to run into unknown ways, and press towards a precipice which, if overstepped, must bring him to destruction, you may, may it is your duty, to warn him of his peril, to advise, to entreat, perhaps, in some *individual* cases, to prevent him from rushing upon destruction. But surely you act not a friendly part towards him, when you find him suddenly and unexpectedly surrounded by appalling dangers, if you require and compel him to continue in this situation, from which he would and has the means to escape, if you would permit him to do so. But yet this is the very course you will pursue, if you adopt this bill in its present shape. You blockade the port into which you have pursued the pirate, and will suffer none to enter there, because it contains the monster; and while you do and say this, you prevent all from escaping thence, although it contains the very beast of prey whom you have thus hunted into these formerly peaceful recesses.

The Dominican friars of old, when they clothed their victim in the habit of San Benito, and led him to the auto-da-fe, while he writhed in the midst of the consuming flames, calmly told him it was for his own good. We seem disposed to act the same part, and arrogating to ourselves these inquisitorial rights, wish to clothe every neutral power in such garments, and leading them to the flames, tell them we do so for their good. But will they believe us? If it be true, as my honorable colleague yesterday asserted, that necessity and right go hand in hand, then their necessity will be as strong as ours; and while it gives us the right to enforce, equally bestows upon them the right to resist, our assumed functions. And if it be true, as my honorable friend yesterday contended, that we have the right to interpolate a new principle in the public law, they have, at least, as strong a claim to do so.

And what, sir, must be the inevitable effect

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of all these various readings, of the holy text, under which different and discordant rights are claimed? No one can doubt it must be war, horrid, interminable war, unless we are content to return to the fold from whence we shall be said to have strayed, to come again within the pale of civil society, and consent to be governed once more by the ancient rules which the necessities, not of one, but of all, produced, which the wisdom, not of one, but of all, digested, and for the preservation of which, unaltered by any, the peace of all requires the guarantee of each.

Mr. President, my colleague and myself differ very much in the idea we entertain respecting this right of instituting a blockade. He considers it as an independent, substantive right, "which may be exerted, (to use his own words,) *per se*." But is this so? Can it be so? The right of instituting blockades is not a substantive right, nor will its exercise be permitted *per se*. The right of instituting blockades is a mere incident, a consequence growing out of the exercise of the higher right of war, and can be exerted only by those placing themselves in a state of war.

If a nation has just cause of war, the question whether she will wage it or not, is one resting solely on its own discretion; and if, in the exercise of this discretion, it is found expedient to waive the right of waging war, then the moment it waives the right of waging war, it waives its right to the exercise of all the incidents, consequences, and accessorial rights of war. To urge the contrary, would be to argue that you had a right over the shadow, after having given up the substance. No, sir. Nations waive all the benefits when they avoid all the risks of war.

If, in the exercise of its discretion, a nation having just cause of war, sees fit to use its perfect right of waging war, the instant war exists, it requires no statute to give the right of blockade, and none can take it away. It is then derived from the high law which the wisdom and convenience of the whole world dictated, and which is consecrated by the holy hand of time. Let no audacious editor dare to pollute, by any blot, erasure, or interpolation, the sacred page. The common good of all mankind requires, that what the common wisdom of all dictated, and the common and long acquiescence of all has sanctioned, should neither be repealed nor abridged by any. If you choose to judge for yourselves, and blot one page, every nation will have a right to follow your example, and then indeed we shall behold the Prophet's scroll alluded to yesterday, written on the inside and out with nothing but lamentation and woe.

If, in the exercise of her discretion, having a just cause of war, a nation declares war, she thus immediately invests herself with the right of straitening her enemy by every means in her power. She may limit him exclusively to his own resources. She may diminish these as far as she can, and take care that they receive no augmentation from any other power: and all

this she is allowed to do to attain the only legitimate end of war—a just and honorable peace. To secure the benefits of peace, the right of war is given, and war justifies the belligerents in employing all those means to accomplish this its great end.

Under this right of depriving him of his resources, is derived the right of taking his property wheresoever it is found beyond the protection of a neutral state. Under this right of preventing any augmentation of these resources, is derived the right of capturing even neutral property when found upon the high seas, destined for the enemy's port, and being contraband of war.

Under these rights of capturing the property of the enemy, and the contraband property of neutrals, destined for his ports, is derived the right of visitation and search. For it would be vain to allow such rights, unless the only means by which they could be enforced were also conceded.

And, under this right of limiting the enemy to his own resources, is derived the right of investing his cities by land, and his ports and harbors by sea, and so cutting off his intercourse with the rest of the world.

The right of visitation and search, and the right of blockade, are three twin sisters, born of the same mother—war. They come into being at the same moment with the existence of war; they continue during the same period while war continues; and, unlike the twins of the heathen mythology, they die at the same instant, when peace returns. Now, sir, if we are justified to exercise in peace one of these rights of war, we are justified in exercising the other; and if we claim the right of blockade in peace, we cannot deny to any nation the right of visitation and search in peace also. Is the Senate prepared to make this concession?

My honorable friend may say, perhaps, that the circumstance of the existence of piracy makes this case peculiar. He may contend, that this bill does not assert the right of blockade generally in times of peace, but only when piracy exists. This is certainly so: but are there not other pirates in the world besides those who infest the coast of Cuba? Have you not declared the slave trade piracy? and has not Great Britain, at your invitation, done the same? and is he not as much a pirate who deals in slaves, then, as he who takes a vessel off Cape Antonio?—and if the existence of piracy in Cuba justifies you in undertaking a blockade there, to suppress that piracy, can you deny to Britain, or any other nation, the right of visitation and search—to suppress the other piracy, the slave trade?

My honorable friend yesterday described, in language of true pathos, the horrid atrocities perpetrated by the monsters of Cuba. The picture was drawn by a master's hand, its colors were most vivid, and its similitude, I doubt not, most just. If, Mr. President, I dared to borrow his pencil for a moment, and to exhibit a more

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rapid sketch of the slave trade, I could present you a scene, over which philanthropy cannot but weep, at which the human heart sickens, and the bare representation of which rouses even calm justice, and makes her cry aloud for vengeance on the wrong-doer. Yes, sir, in the scale of moral beauty, the vilest wretch who haunts Cape Antonio, prowling for rapine, and delighting in blood, compared with the slave trader who traffics on the coast of Africa, is as Hyperion to a Satyr. He stands as a pure angel of light to the foulest demon of darkness—and every circumstance which can be urged to justify you in claiming the right of practising this measure of war in times of peace, in order to exterminate one pirate, may be urged “*a fortiori*,” to justify every other nation in using the other measure of war in order to exterminate the other pirate.

Mr. President: for half a century we have been struggling, sincerely, I know, and I hope successfully, to establish the reputation of being a just people—to acquire the character of doing unto others what we would be done to ourselves in similar circumstances. If we mean to preserve this character, we must take special care to act cautiously and consistently; for, if it is found in any one page of our history, that we are asserting for ourselves a privilege, which elsewhere we had denied to others, we forfeit this character of moral rectitude.

Now, sir, (all other considerations apart,) is it wise to do so? Of all the nations of the civilized world, the United States is that where physical, detached from its moral strength, is least. It ever has been so, it ever must be so, while this Government continues. Unite the two, and at home you may defy the world in arms against you, while abroad your influence will be felt far beyond the limit to which your physical force can ever enable you to reach, by the means of your example, that is, by your mere moral power. It is this at least, sir, that constitutes the material, out of which are formed the pillars of strength and beauty, the Jachin and the Boaz, standing before the vestibule of our temple. While these stand your edifice is secure; it will continue as now, fair to behold, and safe to inhabit. But, once corrode this material; once impair this moral power; and we sink into decrepitude before we have yet attained maturity. Ought we not then to beware how we depart from the right-lined course our predecessors have pursued; how we assert principles in relation to foreign States, now, which they disavowed formerly? Our moral strength, like chastity, once lost, can never more be regained. Now, sir, let us look back into our own history for parallel cases; let us find what where the principles we asserted then, and inquire whether our practice now will accord with them. If they are at variance, we should shun them as we would every thing that tends to evil. There are many members of the Senate who will all recollect the incidents that occurred in the interval between the years 1793

and 1798, and what was the doctrine we then asserted and practised? It was during the period of the French Revolution, when England and France were belligerents, and the United States was the neutral. In consequence of this neutral position, our ports and harbors were filled with our own vessels, as well as with the vessels of both the belligerents and of other powers, not only with their merchant vessels, but with their fleets. What was the practice then? The moment one of the belligerents found vessels of the other in these ports, no matter whether it was a vessel of war or a merchantman, they blockaded them, in fact, although not in name. Every harbor and bay of the United States was subject to this blockade. What was our language then towards these belligerents? You are at war with each other, and may, on the high seas, exercise the rights of war; but you have no right to come here and shut our ports as you have done. We are at peace with each of you, and with all the world besides. You cannot, therefore, claim the right of blockading us in name, and hence, ought not to exert the power of blockading us in fact. Exercise your right of visitation and search on the high seas, and when you there find the property of your enemy, or the contraband property of neutrals, destined for your enemy, take it and apply it to your own use. We do not complain of this. But you must not place yourself at our very door, in order to examine our visitors and friends. By so doing, you harass our lawful trade; you annoy our fair commerce; and you subject us, although at peace, to most of the inconveniences we should feel from flagrant war.

This reasoning was just, and at last prevailed; both parties became satisfied of the rectitude of our claims, and yielded to them.

Now, Mr. President, if the actual presence of an enemy's fleet, in a neutral port, in time of open war, cannot justify blockade, can the presence of a piratical vessel, in any port, justify it? If the French, finding an English fleet in the Chesapeake, ought not to blockade them there, surely you, a neutral, finding a fleet of pirates in the neutral port of Matanzas, cannot blockade it, and so do that which one belligerent power would not be justified in doing towards another.

Mr. President, if we really wish to preserve our good name and moral strength, by acting towards others as we would they might act towards us, we ought not only to refrain from doing any improper action, but even from doing that which, although permissible in itself, might yet fairly justify suspicion of our motives. Terrible would be the result, were we to act on a new principle, and yet leave a shadow of suspicion as to our motives for asserting it. Now, what are we about to do? Are we going to war with Spain, and so to acquire the right of blockade? No! we are going to blockade Spanish ports, and yet keep ourselves at peace. If we go to war with Spain, neutrals must sub-

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mit to our blockades, and will do so willingly; for, your war, by imposing new disabilities upon yourself, must, in fact, impart new advantages to neutrals, which will abundantly compensate them for any inconvenience your belligerent rights create. But, if in peace you blockade, then, when by your blockade you have created necessities, the supply of which must yield inordinate profits, you may raise the blockade, and satisfying the wants which that produced, thus create for yourself great profit at the expense of others, and in which none will be allowed to participate with you. Suppose that, by the blockade of the Havana, you raise the price of flour to \$50 per barrel, and then raise your blockade, who will enjoy the benefit of this high price? The merchants of the neighboring ports in the United States. Thus it will happen, then, that by your own power, you create wants which you will not suffer others to prevent, and, when they have attained their highest point, withdraw your measures of war, assume the attitude of peace, and so satisfy the necessity, and enjoy the profit your own act has occasioned. Neutral states will never submit to this, sir,—they will not suffer you thus to blow hot and cold through the same lips; but will tell you, that, if you choose to war with Spain, do so; for, when by war, you cut yourself off from all peaceful intercourse with her, the trade you give up becomes theirs, subject only to your belligerent rights. That they will be thus compensated for the inconvenience to which you subject them. But, if by the measures of war, you create wants, which, under the garb of peace, you yourself may satisfy, they, and they only, feel the evils of the war, while you, and you only, can enjoy the benefits of peace. They will say to you, that this Centaur form, half war, half peace, is a deformed monster, which the friends of humanity must extirpate; and more than one Nestor will be found at this feast of the Laphætes, ready and willing to essay the task.

Sir, it is a fraud on neutral rights, and it cannot be expected they will submit to it. If you go to war you enjoy its benefits, and take the consequences; but here you take the benefits to yourselves, and throw the hardships and annoyance on the innocent.

There is one more view of the subject to which I should wish to call the attention of the Senate, if it were not for the contempt with which my honorable colleague seems to consider every thing like detail. I cannot jump, however, at once to my conclusions, as he does—I must go step by step, and satisfy myself of its operation every way, before I can pronounce that any measure is good. It is my misfortune, sir, and you must pardon me, if, accustomed as I have been, through my whole life, to arrive at conclusions only by the slow process of reasoning, I still adhere to my old course; and, having no pretension myself to intuition, I am distrustful of its apparent effects upon others. I do not pretend, sir, to argue by conclusions—

I must plod on, and ask, at each step, not merely *quara*, but *quo modo*, also. In this instance I have done so, and I do not see my way clear. If we mean to institute blockades, I take it for granted we mean to enforce them when instituted. If so, we must presume, sir, that there will be cases of capture, and, of course, efforts at condemnation. But where is condemnation to be made? Will the committee tell me by what forum this question of condemnation will be tried, and what allegation they will prefer to attain it? If it had been a war measure, it would have been brought before a prize tribunal; but the bill has directed no prize tribunal to be instituted, and indeed it would have been strange if it had. A prize without war would be as great an anomaly as a blockade in peace.

Suppose a vessel is brought before a prize court, however, and you say she is an enemy, or that she has conducted herself *quasi* enemy, because she has violated your blockade—yes, sir, your blockade, declared by statute—what will your prize judge first ask? Does war exist? The answer may be given in the language of the advocates of this bill themselves, war does not exist, but we are merely practising a measure of war in time of peace, and therefore ask you to help us out by your decree. But what must that decree be? It must be this, and this only: Prize, the fruit of war, is not to be won by the acts of peace; he who asks it must have risked his life, his liberty, and his property, for its acquisition. You who have risked nothing, can take nothing, at least from this court, but must seek the boon which you ask elsewhere.

Suppose that you apply to some other than a prize tribunal, to some court of admiralty, or other forum, bound to administer the *jus gentium*, and there ask the confiscation of the property of a neutral captured on the high seas, for a breach of your statutory blockade—what will the judge there tell you? He will tell you, as he has often done, that municipal power is, in its very nature, territorial; it cannot reach beyond the bourne of the country where it is exerted, except over the persons or property of its own subjects, and that he cannot condemn the property of strangers for the breach of a law, in the enactment of which they had no share, and by the obligation of which they are not bound.

You must then be driven at last into a mere municipal tribunal, to some court of *fiso*, to ask the condemnation of the property of an alien, for some act done by one who never owed you obedience, and without your territory. Sir, those who ask this, are either not aware of its consequences, or cannot be serious in expecting their application to be granted.

Mr. President, I have chosen to exhibit the subject to you thus, through the medium of your own courts, rather than ask you to accompany me to London, or to St. Petersburg, to witness the scene that must take place there, when your representative undertakes to an-



nounce gravely to these sovereigns, that the Congress of the United States has passed an act confiscating their property, not *jure belli*, but for acts done under their authority, and out of your territory. This scene I leave to the imagination of those who may find mirth in it. To me it would give none.

How then, sir, I ask, is this blockade to be carried into effect? [Mr. BARBOUR said by force.] Sir, force is not right. It never did convey the property of one neutral into the possession of another, where the public law forbade it; and we know not yet on which side of the question the conclusion of this *ultima ratio* may apply.

The moment you announce this doctrine, you stand on the principle that force gives rights; and, when you interpolate it into the page of the public law that expressly denies it, you place yourself beyond the pale of civil society; the whole civilized world will rise against you, and declare you in a state of barbarism as well as blockade.

It is contended, sir, that, as we have a right, in peace, to lay embargoes, and to grant letters of reprisal, and as these are war measures, therefore we have a right to institute a blockade, which is not more a war measure. I have never understood that embargoes and reprisals were war measures, and should like to be informed from what authority such assertions are derived. Embargo is no more a measure of war than the infliction of the sanction of any other municipal law is a measure of war. Its operation is confined to your own territory, the same as in any other municipal law. A man commits a murder, and is hanged for it. This might as properly be called a measure of war as an embargo.

In themselves, they are measures of peace and tranquillity, a mere extension of the municipal powers of the state over those who ought to submit to such powers, and no one ever considers them as otherwise. Look back to the time of Washington. He laid an embargo for 60 days, and afterwards extended it to 90 days. Did any one consider it as a measure of war or force? Embargo may be resorted to as a means of preparing ourselves for war, and so may the construction of fortifications. You are building forts on Old Point Comfort and Hurl Gate; yet no one considers these as measures of force or war, because they may be useful in war. Nor can we say more of embargoes. Thus much for embargoes then.

As to letters of reprisal, they are always understood as measures of peace, designed to prevent war. I grant that they often lead to war; but, in themselves, they are as much measures of peace as an embargo, and their object always is certainly to prevent war.

But, as to blockade, the effect is very different. Letters of reprisal act on the guilty, and the guilty alone; and embargo acts on all alike, but it acts municipally on all within the territory; whereas blockade acts beyond the

territory, and acts directly upon the innocent only. It now only remains to inquire into the only precedent that has been cited in support of this proceeding. I allude to the blockade of Cadiz by the French. I say that France was perfectly justifiable in declaring that blockade; but, in the course she pursued, there is nothing to justify the present measure. War then existed, and, as a consequence of war, blockade was adopted by France. It is said that France declared she was not at war with Spain. Sir, is not this the language which every ally, under similar circumstances, is compelled to use? When a part of a nation attempts to separate itself from the rest, or to establish a new sovereignty, the effort, while it is in progress, is declared, by the ancient sovereign of the whole, to be rebellion, and force is used to bring back the rebellious member to its duty. This force, when resisted, makes war exist; and such a war is distinguished, not as public, but as civil war. All but the belligerents give it this denomination, and the revolutionary party calls it by the same name; the ancient sovereign, and its allies, however, will never acknowledge it to be war at all—they say it is insurrection and rebellion; and there never has been an instance known of any nation, endeavoring to regain a revolted portion of her state, that had severed itself from her, calling the rebellious parties enemies. No, they style them rebels and traitors, and the moment they catch them, hang them. Were they once to acknowledge them as enemies, they could not thus punish them, because they would be entitled to the privileges granted by civilized warfare, which forbid us so to punish an enemy, or to exert over him our municipal means. We, ourselves, stand a memorable example of this: in the year '76 we declared ourselves independent—Britain declared us to be rebels, and used all her power to reduce us again to the slavery from which we were doing our utmost to free ourselves. She put forth all her physical means, and had she not been fearful of a dreadful retaliation, all the prisoners she took would, no doubt, have suffered as rebels and traitors, and not as enemies. She never could acknowledge us to be enemies until she admitted us to be independent.

France, some years since, by one of her arrears, declared St. Domingo in a state of blockade, and announced her purpose of executing any who should presume to enter it in violation of this law. None ever doubted the perfect right of France so to rule her own possessions if she thought proper; and, until either France or the United States should recognize the independence of this revolted colony, we were constrained to consider the ancient regime as still existing in St. Domingo, and to regard that island as a part of the French Empire, and, therefore, properly governed by its municipal decrees. None ever doubted either, that, to these rights of sovereignty, France might, at any time she thought proper, superadd the

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rights of war. And the whole question was, whether she had thought proper so to do. But France, to this hour, has never recognized the inhabitants of Hayti as her enemies, but merely as her revolted subjects.

An intestine commotion existed some few years since in England, which wanted nothing but numbers to magnify it into rebellion, and success to make it revolution. But Thistlewood died the death, not of an enemy, but of an insurgent.

In short, sir, wherever revolt against existing authority (legitimate or not) can be found, neither the ancient sovereign nor any of his allies, can ever consider this (so far as the quondam subject is concerned) to be war, and so to constitute the insurgents enemies. As to those, it is rebellion merely; but as to all others, it is civil war, the existence of which adds the admitted rights of war, to the prior rights of sovereignty claimed by one of the parties.

As regards the blockade of Cadiz, France could not consider Spain as at war with part of her own people. France came as her ally to lend her assistance, and as Spain never acknowledged she was at war, neither ought her ally so to do: but civil war existed, and hence there was no impropriety in blockading Cadiz. This case, then, cannot be cited as a precedent in justification of the present measure.

I think, then, Mr. President, I have established the proposition, that, considering this contemplated blockade as a measure of peace, it is not justifiable, and, therefore, is one to which we have no right to resort. But supposing it were proper, will it be efficient? Under this bill, when you have met a pirate on the high seas, and chased him to his den, then a despatch is to be sent 1,800 miles to the President of the United States, to know what to do, and before the messenger can possibly return, there will be no further occasion to blockade most probably, for the beast will have escaped from his place of refuge.

You would not then institute a blockade, I presume; for it ought to be considered satisfactory that those who could not prevent his ingress have not opposed his regress, and if this be not satisfactory, it is just cause of war.

If, then, sir, you interpret this bill literally, it is nugatory; but no such interpretation will be given to it. If the Executive wish the adoption of this measure, you cannot believe that it is contemplated to launch such a mere *brutum fulmen* as the literal interpretation of its language would make it. No, sir, the means given, like all other means in this Government, will be adapted and made efficacious to the end, for the attainment of which the preamble or title announces they were to be employed. To make them so, however, the authority you delegate to him must, of necessity, be sub-delegated to some other present on the spot. Possibly to some one or more of the sixty-seven new officers you made a few days since, every one of whom will, ere long, become a commanding officer on

that station, if the warfare is to be carried on in open boats, as it is suggested it must be. Now, sir, are you willing to place the rights of neutrals, and, consequently, the peace of this nation, in the hands of any such as these? Have you not already too many examples before you, examples furnished by the very document now in our hands, of the want of discretion in those of much higher grade, to confide any power, of this description, even upon them? But this will be the necessary effect of the bill, if it produces any; and, if it produces none, it is useless, because inefficient. Mr. President, I have great respect for many of our naval officers; but allow me to say, that you are never safe when you leave the power of plunging us in war with those whose interest and whose pride it will ever be to make war.

Sir, I began by stating that, although I was opposed to the means provided by this section of the bill, yet I was not opposed to the object of the bill. I am willing to go as far as any one in promoting the good end of putting down piracy in the West Indies, or any other part of the world. If the President wants ships for that purpose I will build them, as many as he desires—if he wants money, I will give it till he cries enough; and, when this power and these means are intrusted to the Executive, I shall hold the Executive responsible for the proper application of them. The end proposed is the suppression of piracy. All proper means I will grant; and if this end is not then effected, all the mischiefs that result must be laid at the door of him who misapplied the means. I have no doubt, sir, on this subject of fresh pursuit; a pirate is an outlaw, a beast of prey; wherever you find him, you have a right to pursue and slay him. For my part, I don't care whether the pursuit is fresh or not; I believe you may lawfully go anywhere where he unlawfully is. You may take him, condemn him, and after you have condemned him, I would not pardon him. If, in this pursuit, you find any one affording him refuge, giving him aid or comfort, you are at liberty to attack him also; he is an accessory both before and after the fact, a *particeps criminis*, and must take the consequences of his guilt.

This, sir, I know very well, may lead to war; nay, very probably, is war; but it is open war with guilty pirates and their guilty associates only, and not war in disguise, waged against innocent neutrals, under the new doctrine of practising the measures of war in times of peace.

Although I am willing to employ all proper means to effect this desirable end of suppressing piracy, I can never consent to blot the bright escutcheon of the United States, or jeopardize its moral force, or fix a stain on the character, which, with so much care, we have been endeavoring to establish for the last fifty years, by asserting the right of doing that which the public law forbids. Therefore, sir, I move to expunge the third section of the bill.

Mr. BARBOUR thought that he had acquitted himself of his share of duty in the exposition he had made yesterday of the views of the committee. Other members of the committee were charged with the defence of their measures against any attack that might be made upon them. But as his friend and colleague had moved against the most efficient branch of the bill, and no gentleman had risen in reply to his argument, unprepared as he was, he could not consent to permit the question to be taken without attempting the vindication of a measure recommended by the committee, and which had provoked such severe animadversion from his colleague. His regret at the necessity of being obliged again to trespass on the patience of the House, was heightened by the consideration that it was his misfortune to have to encounter his colleague. Success rarely attends a divided household. As heretofore he had had the good fortune, on all subjects of consequence generally, to be aided by his former colleagues, he hoped this would be the last case of division with his present. When to these circumstances was added the consideration that, on the subject before us, and all the results of prize questions and admiralty decisions, the principal objections urged by his friend, that he was laboring in his vocation, and perfectly familiar with all their technicalities, uniting the powers of a capacious mind with the lights of experience, the Senate would readily appreciate the unequal contest into which he was about to enter. Nothing but a consciousness of truth could sustain him in the conflict.

Mr. B. then proceeded to state the proposition contained in the third section of the bill.

The advocates of this section are bound, it is agreed, to make out, to the satisfaction of the Senate, 1st. That we have the power to adopt this measure of coercion, independently of war; and, 2dly. That the exercise of this power, at this time, is called for by the exigency of the occasion. In making out the first proposition, he had but little to add to his argument of yesterday. By what standard is the question of the existence of the power to be tested? My honorable friend contends that the laws of nations, as made known by jurists, was the only rule by which we could be governed. That to seek to add to, or in any way to interpolate on that code, was impious, and fraught with incalculable mischief. Indeed! How has it happened that, while all other sublimary things are imperfect, and, as it is hoped, in a progressive state of improvement, that this system, most complicated, and involving the deepest interest, should have already arrived at perfection? A system whose principles originated without deliberation, and which were frequently dictated by the powerful to the weak. But, however the principles may now be consecrated by acquiescence, and by time, they must have had their origin. They were established by the same power common to us—the employment of means deemed proper or convenient by those

who used them. But the present is a case not anticipated, or one which had not occurred. The laws are silent—there is no precedent on the files. The necessity, as will be shown under the second proposition, exists for the employment of this mean to save the lives of our people from destruction. I ask, when did we forfeit the right of self-preservation? When was posterity disfranchised? At what epoch did the interdict issue—and by whom? No. This idolatrous reverence inculcated for the writers on international law, is at war with our reason. This servile deference for precedent is not adapted to the latitude of America. Our ancestors did not thus act when they gloriously rose above precedent and authority, and proclaimed our emancipation. Our own history of annual legislation shows the necessity of applying new rules to new and unprovided-for incidents which all changeable time is continually producing. All that is incumbent on those who exercise power, is to show that inevitable necessity—for that necessity is inevitable, when self-preservation is at stake—demands it. You are never to exceed the limits which that necessity points out, but you may safely advance to them. On this branch of the discussion, I alluded yesterday to the precedent established by France in the blockade of Cadiz. My colleague contends that France was right, and I pray to inquire how he makes it out? He will not admit that Spain was at war—no, not even civil war—because, in that event, Spain would have been, by the modern usages, deprived of the right of murdering her rebellious subjects. France, he says, as the ally of Spain, stood on the same footing as Spain, and therefore she was not at war, and this is what France herself did expressly announce to the world, and yet, what is his conclusion? Why, that France had all the privileges of a belligerent.

Although the great burden of his previous argument was to show that a blockade could not exist independently of, but was a consequence of war, yet, when he now labors to ascertain France was not at war, yet she was justifiable in thus blockading Cadiz—this course of reasoning is, to my mind, unintelligible, and a perfect contradiction. Whether this results from the fallacy of the gentleman's argument, or my incapacity to comprehend, I leave to the Senate. I shall content myself with these remarks on this branch of the subject, and by referring to my remarks of yesterday—that we have just cause of war against Spain; that humanity requires we should obtain our end short of war, if practicable; that the intermediary steps of embargo and letters of marque have been resorted to by nations acting on the suggestions of this humane principle, and that blockade is defensible, on every ground as these, save the influence of precedent; and that we have just the same power to establish precedent as our ancestors, and when called to establish one, dictated by self-preservation, and limited to the exigency, that we stand justified,

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and shall be justified by the common consent of mankind. Now, sir, as to the necessity of exercising this power. For years, hundreds of our fellow-citizens have been murdered by a desperate association of brigands. They elude our just vengeance by taking refuge in the colonies of Spain. They are not only protected by the inhabitants of those islands, but they are justified. Justified! The inhabitants share in their plunder! They hover around the ports, watch the departure of our vessels, and are enabled thereby to execute their fell purposes of robbery and murder. The whole island of Cuba, for example, all conditions of its people, are leagued in this diabolical crime. Our agent there, Mr. Randall, most respectable we learn from others, and very intelligent, as we know from his correspondence, assures us that, unless we can make the people on land feel our power, by blockading their ports, and depriving them of this dreadful source of gain, and cutting off their intercourse with the world, that all external efforts to arrest the evil are in vain; that you must produce a moral revolution on land, through their interests. In confirmation of this is the President's message of the 11th, who points out this measure as necessary to the suppression of piracy. What stronger evidence do you require of the necessity of exercising this power? I trust I have sustained both the propositions. I asserted the right and the necessity of exercising this power. Now, sir, what are the objections? That we shall be involved in war with the neutral powers, whose rights will be compromised by this measure? And it is triumphantly inquired, how is this measure to be enforced? The answer is, by a sufficient force to be placed at the point blockaded. Ah! what is to become of the prizes? Before what Court of Admiralty is the prize to be brought, and by what text is the prize question to be decided? The answer is, that it is not contemplated to make any, but, by actual force, to arrive at our object by excluding, not capturing the vessels; though, at the same time, if necessary, I have little question if the same necessity existed to carry the principles of blockade to this extent, as to establish the limited blockade, which the committee look to, we should have the authority to do so. But the gentleman charges me with an utter contempt for detail. If by this he means that I respect the substance rather than the shadow, that I hold the difficulties of a prize question before an Admiralty Court as insignificant, when compared with the fortunes and lives of my fellow-citizens, then I plead guilty to the charge. I do, indeed, feel but little interest "in the plumage of a dying bird." A measure is here presented, called for by the strongest of all earthly considerations, the salvation of our fellow-citizens. Shall we abandon them? Shall we give them up to the murderous assassin, who spares neither age nor sex? Shall these mighty mischiefs be held as unworthy our notice, because the ingenuity of counsel shall be able to

suggest difficulties in one of the remote, indeed I may say impracticable results, what decision shall be pronounced on a prize question? My colleague says, and I do not question it, that he feels the same horror and detestation for this enormous mischief as myself or any member of the committee; and that he is willing to go all *proper* lengths for its suppression; that he would visit the island with our forces, and put not only all the pirates to death, but all who had given them aid or countenance. That he is willing to give ships and money, and then to hold the Executive responsible for their proper application. But this very Executive tells you that a blockade is necessary. At whose door will the responsibility rest, if you give not the power? But my colleague is willing to give what is necessary; but qualified with the condition that it must be proper in his estimation. Why talk of doing what is necessary, when you refuse that, without which every thing will be ineffectual. External means will not answer. The people of the islands must be made to feel. A blockade of their ports is indispensable; yet this you refuse. The lives of your people exposed to continued massacre; and yet this calamity is to be disregarded while we are fastidiously inquiring into the difficulty of a prize case. 'Tis the case of a physician, weeping over his dying patient, with the means of recovery in his hand, but who, from some fastidious delicacy, refuses the application, and to that delicacy offers him as a sacrifice. But this measure is to operate exclusively on foreigners, in the language of my friend. Directly the reverse. It acts only on the guilty. How are foreigners to be affected? Surely their interest is directly to be subserved. The extirpation of these demons is the common concern of mankind. The temporary exclusion of foreign ships from their den surely can form no just cause of complaint. But the gentleman foretells disastrous consequences. From what source he draws his prophetic inspirations I know not. I will content myself with a different prophecy: that such a measure, in such a cause, will obtain the applause of mankind. Who can complain? Spain? We are doing her a favor. England? She is engaged at this moment in the common cause of extirpating the pirates. France, independently of her equal concern in their destruction, will scarcely, after her act of blockade at Cadiz, have the confidence to complain. If she should, let her be told that, while she commands for the right of blockading a city, for the destruction of patriots, fighting for all that is dear to man, their altars, their firesides, their liberty, that surely they will not complain of an American blockade, directed against a horde of the most prostituted and ferocious of mankind, whose extirpation is the united wish of all mankind.

My colleague permits himself to find a parallel between this case and our own, during the war of revolutionary France, and urges that this assumption of ours may become a precedent

which would shelter, in its retroaction, the enormous pretensions of those powers, when blockading our ports. But where are the circumstances of resemblance? On what ground did my colleague indulge the comparison? America—an independent Government, in a neutral position, performing her relative duties with good faith to the contending parties, surely has no trait of resemblance with desperate brigands, at war with all mankind—audaciously trampling under feet all laws, human and divine.

I heard, with equal surprise and regret, that, however he acquitted us of improper motives, that foreigners would suspect their purity. That we would blockade the Havana till the suffering of the inhabitants should carry flour to fifty dollars per barrel, when our blockade would be immediately lifted, and Boston or Norfolk would supply the demand. This is, indeed, a humiliating picture. Who could be wicked enough to indulge such an insinuation? After years of patient endurance and long-suffering; after our ships have been plundered and our citizens given up to torture and death; when, instead of rushing to vengeance, we have calmly addressed ourselves to the Spanish Government for redress, and have waited for her reply in vain; after our intelligent agent on the spot tells us this measure is indispensable; after the President of the United States has recommended its adoption, and the united wisdom of both branches of Congress shall have sanctioned it—to suppose it possible that any foreign nation will have the audacity to carry our measures to a counting-house motive, I repeat again, is a suggestion which I heard with surprise and regret. But the power is given in a way to render it futile. After these beasts of prey have been traced to their den, they are not instantly to be blockaded, but the President is to be advised of the circumstances before the blockade takes place, and when the fugitives will have escaped. Why does not my colleague employ the powers of his mind in amending? The truth is, that the check complained of was inserted in deference to the opinions of those who permit themselves to believe that they see danger in any measure of energy. It was to relieve ourselves from the fear suggested by my colleague, and which may be entertained by others, that our commanders are not trustworthy. This, bear it in mind, is not our opinion. We have confidence in the prudence of our officers, or, if they violate their duty, we have authority here to punish and atone for their injuries. If, therefore, the clause is not sufficiently energetic, I will go as far as any one in amending it. But, in its present shape, is it inoperative? Is there nothing in the knowledge of these people, that, though justice is, for the time, suspended, it will assuredly overtake them? On what other ground is the wickedness of individuals or nations prevented? The law exercises its silent influence to the utmost extremity of the nation. Not that the sword and the executioner are always present, but the

conviction that they will finally smite the offender. So, also, will these people calculate; so, also, all nations must calculate. Believe me, then, the very existence of this power, lodged in the hands of the Executive, will have great influence, and may possibly supersede the necessity of its exercise. I have thus, without, as you know, a moment's preparation, endeavored to answer the objections of my colleague against the third section of the bill; and, as at present advised, I shall not trouble you again on this subject. The further discussion will be left to others. Believing, sir, that an awful responsibility hangs over us; that the lives of many of our fellow-citizens are involved in the result of our decision, I call for a record of my vote. In the day of urgency let every man stand on his own ground; if the measure be adopted, and ill consequences ensue, I am willing to meet the responsibility. If rejected, and thereby the blood of our people be spilled, let that blood be not laid at my door.

When the debate had progressed thus far, on motion, the further consideration of the bill was postponed to Monday next.

TUESDAY, January 25.

*Drawback on Manufactured Hemp.*

The Senate resumed the unfinished business of yesterday—the bill for allowing a drawback on the exportation of cordage manufactured from imported hemp.

Messrs. D'WOLF, and LLOYD of Mass., spoke in favor of the bill, which was opposed by Messrs. EDWARDS, and JOHNSON of Ken.

The question being taken on engrossing the bill for a third reading, it was decided in the negative, by yeas and nays, as follows:

YEAS.—Messrs. Bell, Clayton, D'Wolf, Eaton, King of Alabama, King of New York, Knight, Laman, Lloyd of Massachusetts, Noble, Palmer, Parrott, Ruggles, Seymour, Smith, Thomas, Van Buren, Van Dyke—18.

NAYS.—Messrs. Barton, Benton, Brown, Boulligny, Chandler, Dickerson, Edwards, Elliott, Findlay, Gaillard, Hayne, Holmes of Maine, Holmes of Mississippi, Jackson, Johnson of Kentucky, Johnston of Louisiana, Kelly, Lowrie, McIlvaine, McLean, Macon, Talbot, Taylor, Tazewell, Williams—25.

So the bill was rejected.

*Internal Trade with Mexico.*

The Senate then proceeded to the consideration of the bill reported by Mr. BENTON, from the Committee on Indian Affairs, on the 11th inst., to authorize the President to cause a road to be marked out from the frontier of Missouri to the confines of New Mexico, and making appropriations therefor. The bill having been read through—

Mr. BENTON rose and said, that the petitions presented by the inhabitants of Missouri, and the communication derived from Mr. STORRS, had proved the existence of an inland trade between the valley of the Mississippi and the internal provinces of Mexico. They had

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shown also, he said, the dangers to which the trade was subject, from Indian depredation on the way, and arbitrary exactions after it arrived. The Indians, prone to robbery and murder, attacked and pillaged the caravans; the Provincial authorities, separated by an immense distance from the parent Government, imposed arbitrary duties on the merchandise imported. To relieve the trade from those dangers and impositions, the citizens of Missouri had addressed themselves to the Congress of the United States, and claimed the interposition of its powerful protection. They have asked, said Mr. B., among other things, for the right of an unmolested passage, protected by treaty stipulations, through the territories of the intervening tribes, and for the appointment of agents, with suitable powers, to reside at Santa Fe and Chihuahua. In deciding upon these requests, the committee to whom the subject was referred, and whose organ I have the honor to be, have held it to be their duty to inquire strictly into the value of the trade for which protection is sought, the probability of its continuance, and its effect upon the social and political, as well as upon the commercial relations of the two countries. They have inquired, accordingly, and, finding the results to be favorable to the object of the petitioners, they have instructed me to report the bill which has been read at your table.

The question being now put, "Shall this bill pass?" I feel myself, said Mr. B., called upon by the novelty of its propositions, by my position as chairman of the committee which reported it, and, above all, by the relation in which I stand with respect to those who are chiefly interested in its passage, to state the reasons which induce me to give an affirmative answer to that question.

First then, sir, said Mr. B., it does seem to me that the trade between Missouri and Mexico is sufficiently valuable to merit the favor of the national protection. It opens a new and extensive market for the cotton goods grown and manufactured in our own country; a market not circumscribed by the walls of a town, or the shores of an island, but spreading over an area of a million of square miles. The seven internal provinces are equal in extent to seven of the principal kingdoms of Europe put together. They are large enough to give rise and outlet to a river washing more territory than the Danube—the Rio del Norte, which traverses sixteen parallels of latitude, and finds in three provinces only, in those called Eastern, an ample space in which to unfold its enormous length. The resources of this extensive region are rich and various. The mountainous districts abound with furred animals; the plains with mules, horses, and cattle; and the central parts with gold and silver mines. The population, exclusive of that description of Indians which the Spaniards call "*Indios Bravos*," amounts to 600,000 souls, and increases with the rapidity only known to new countries, where manners are

simple, the means of subsistence abundant, and land a free gift to all that will take it. The trade of a people inhabiting a country so vast, possessing resources so rich, and increasing in numbers as rapidly as ourselves, must doubtless be valuable. It has already yielded, for the present year, \$190,000, in gold and silver coin, and bullion, and precious furs; and this sum, although considerable in itself, is only a beginning and an earnest of what may be expected when the trade is protected and carried to the extent of which it is capable.

The trade promises to be permanent. The internal provinces are naturally dependent upon the valley of the Mississippi for their supplies of foreign goods. They bind upon each other for more than a thousand miles. The Red River, the Arkansas, and the Kansas, furnish different lines of water communication; and the land route is free from obstructions to the march of wagons and carriages, and abounding with the means of subsistence for men and horses. This interior region, so open to access from the valley of the Mississippi, is almost unapproachable from every other side. It is separated from Mexico proper, by distance, by deserts, and by mountains. It is cut off from the Atlantic and Pacific Oceans by the same barriers. Its interior position has acquired for it the emphatic title of "*Provincias Internas*," and induced the Kings of Spain to favor it with a government of itself, independent of the Viceroy of Mexico. To aggravate the evil of such a position, is the want of navigable rivers. The Rio del Norte, though magnified by the Spaniards by the imposing titles of "*Bravo*," and "*Grande*," is yet only brave in a war upon sand, and only great in the distance which it runs. Of the two thousand miles which it displays in length, no more than four or five hundred, and these towards its head, are fit for navigation; all the rest is choked up with sand. Akin to this evil is another—the want of convenient seaports. The internal provinces may be said to be without seaports. Guaymas, in the Gulf of California, is small in itself, not readily approached, and separated from the valley of the Rio del Norte, by some hundred leagues of distance, and the lofty ridge of Sierra Madra, San Bernardo and Galveston, on the coast of Texas, are nothing but anchorages, and separated by great distances from the rich and populous provinces. Vera Cruz, Tampico, Alvarado, and Acapulco, are about as far off as our Pittsburg is from the town of Santa Fe. They are as far off in measured miles, and about ten or twenty times further in the difference of transportation. From the Mexican ports, the whole route to Santa Fe is over land, and the backs of mules the only means of conveyance. From Pittsburg, the entire distance, with the exception of a mere fraction, is a water line of river navigation. Look at the maps. See the Ohio running a thousand miles direct from Pittsburg towards Santa Fe; then see the

Kansas, the Arkansas, and Red River, running directly from it, and meeting the Ohio in the central channel of the Mississippi. Thus not only St. Louis and the towns on the Missouri River, but those on the Ohio, and even those on the seaboard of the Atlantic States, are nearer to Santa Fe than either Vera Cruz, Acapulco, or any other Mexican port. But the decision of the question does not depend upon a view of the maps. It is already solved. The merchandise which is now carried from Missouri to the Internal provinces, is the same which had been previously brought down the Ohio from the Atlantic ports and factories. The cotton goods thus carried out, bear the stamps of Arkwright and Waltham, and are the same which, after paying the cotton-grower for the raw material, and leaving a profit in the hands of the manufacturer, the first, second, and third sellers, and giving employment to numerous carriers, are still sold at another profit in the Internal provinces, and yet sold so low as to drive out of market every competitor from the Mexican ports. This fact, so important to the legislator, is vouched by Mr. STORMS, who informs us that the arbitrary duty imposed by provincial authority, upon American importations, was imposed at the instance of the traders from the Mexican ports, to enable them to contend with those who derive their supplies from the seaboard of our north Atlantic States. Allied by nature, the Internal provinces are now allied in fact, with the valley of the Mississippi. For ages they had been separated by the power of man. The jealousy of despotism had raised between them a barrier of interdicts, more impassable than walls of stone or brass. But liberty has raised her head, and the barrier is overthrown. Our adventurous citizens enter, and unless checked by the government, they will make the inland trade to Mexico as permanent as are the localities, and the liberties of their countries.

To the people of the West, I know this trade to be an object of the greatest value. Their own interior position cuts them off from foreign commerce. The Mexicans are their neighbors, and the only foreign power with whom they can trade. It is one of the few sources from which they can derive the precious metals. The coin already brought in, constitutes the circulating medium of the country in the western parts of Missouri. It is paid into the offices for public lands, and then comes into the coffers of the Government, whose protection it now solicits.

But it is not the West alone which is benefited by this trade. The North and the South participate in her profits. The South grows the cotton, the North works it up, and the West exports it; thus displaying one of the most beautiful operations of agriculture, manufactures, and commerce, mutually dependent upon, and mutually aiding each other.

That the trade will be beneficial to the

inhabitants of the Internal provinces, is a proposition too plain to be argued. They are a people among whom all the arts are lost—the ample catalogue of whose wants may be inferred from the lamentable details of Mr. STORMS. No books! no newspapers! iron a dollar a pound! cultivating the earth with wooden tools! and spinning upon a stick! Such is the picture of a people whose fathers wore the proud title of "*Conquerors*:" whose ancestors, in the time of Charles the Fifth, were the pride, the terror, and the model of Europe; and such has been the power of civil and religious despotism in accomplishing the degradation of the human species! To a people thus abased, and so lately arrived at the possession of their liberties, a supply of merchandise, upon the cheapest terms, is the least of the benefits to be derived from a commerce with the people of the United States. The consolidation of their republican institutions, the improvement of their moral and social condition, the restoration of their lost arts, and the development of their national resources, are among the grand results which philanthropy anticipates from such a commerce.

Thus, Mr. President, I think it is fairly demonstrated that the trade in question is worthy of the national protection. The next inquiry is—*Will the Government protect it?* I answer that the claim for protection rests on the same principle which carries protection to the commerce of the Union upon every sea, in the most remote countries, and upon distant isles. Our maritime commerce requires ships, treaties, ambassadors, consuls, and successive wars, to protect it. The inland trade to Mexico, requires a *right of way*, to be purchased from the Indians, and two or three commercial agents to be stationed in the Internal provinces. At this very moment we are enacting, with the greatest unanimity, measures of a war character against the pirates of Cuba; and for what? To protect the lives and merchandise of our citizens, in passing through the Gulf of Mexico. And will you not protect the same citizens in going to Mexico by land as well as by water? Will you not protect them against Indians as well as against pirates? Will you lavish your sympathy upon a citizen hung by a pirate, and deny your compassion to a citizen shot and butchered by an Indian? The story of piratical murders has been told to you in language which harrows up the soul; now listen to a plain statement of robberies and murders committed upon our citizens on their way to Mexico.

"Mr. Choteau was attacked upon an island in the Arkansas River, by 800 Pawnees. They were repulsed with the loss of thirty killed and wounded, and declared it to be the most bloody affair in which they had ever been engaged. This was their first acquaintance with American arms. In 1822, Mr. Maxwell was killed, and another American wounded, by the Camanches, near the mountains. In 1823, the

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Pawnees killed a Spaniard, on the Arkansas, in the service of William Anderson, and forcibly took from him thirteen mules. The company which went out last summer had upwards of forty horses and mules stolen, about fifteen miles south of the Arkansas, by the Oamanches, who lost one man in the affair. The same company, thirty-two in number, encountered, on their return, a war party of eighty Pawnees. The war-whoop was raised, and both parties drew up for action; but the enemy agreed to a compromise when they found that they could not rob without losing the lives of their warriors. In the winter of 1822-'23, Mr. John McNight, of St. Louis, was killed by the Oamanches, at some distance south of the Arkansas."

The use of an unmolested passage between Mexico and the United States, is as necessary in a political, as in a commercial point of view. They are neighboring powers, inhabitants of the same continent, their territories contiguous, and their settlements approximating to each other. They are the two chief powers of the New World, and stand at the head of that *cordon* of Republics, which, stretching from pole to pole, across the two Americas, are destined to make the last stand in defence of human liberty. They have the legitimates of Europe in front, and the Autocrat of all the Russias in the rear. They are Republican, and Republics have become "the abhorred thing," the existence of which is not to be tolerated in the land. The time was, Mr. President, when the kingdom and the republic could exist together; when the Swiss, the Dutch, and the Venetian republics were the friends and allies of kings and emperors. But that day has gone by. The time has come, when the monarch and the republican can no longer breathe the same atmosphere. A speck of republicanism above the political horizon now throws all Europe into commotion. Telegraphs play, couriers fly, armies move, the Cossacks of the Don and of the Ukraine couch their lances, kings and emperors vault into their saddles; a million of bayonets turn their remorseless points against the portentous sign! We Americans (I use the word in the broadest sense) we Americans see and hear all this, yet we remain strangers to each other, form no associations, and our communications are as tardy and as difficult as they are between the inhabitants of Africa and Asia. Even with Mexico, our nearest neighbor, we have no communication, except by a sea voyage, through a boisterous gulf, infested with pirates. The bill before you is intended to correct a part of this evil; it will make "straight the way" between the United States and Mexico; it will open an easy channel of communication between them, not for merchandise only, but for thoughts and ideas; for books and for newspapers, and for every description of travellers. It will bring together the two nations whose power and whose positions, make them responsible to the world for the preservation of the Republican

system. And shall a measure of such moment be defeated by a parcel of miserable barbarians, Arabs of the desert, incapable of appreciating our policy, and placing a higher value upon the gun of a murdered hunter, than upon the preservation of all the republics in the world!

To the Indians themselves the opening of a road through their country is an object of vital importance. It is connected with the preservation and improvement of their race. For two hundred years the problem of Indian civilization has been successively presented to each generation of the Americans, and solved by each in the same way. Schools have been set up, colleges founded, and missions established; a wonderful success has attended the commencement of every undertaking; and, after some time, the schools, the colleges, the missions, and the Indians, have all disappeared together. In the South alone have we seen an exception. There the nations have preserved themselves, and have made a cheering progress in the arts of civilization. Their advance is the work of twenty years. It dates its commencement from the opening of roads through their country. Roads induced separate families to settle at the crossings of rivers, to establish themselves at the best springs and tracts of land, and to begin to sell grain and provisions to the travellers, whom a few years before they would kill and plunder. This imparted the idea of exclusive property in the soil, and created an attachment for a fixed residence. Gradually, fields were opened, houses built, orchards planted, flocks and herds acquired, and slaves bought. The acquisition of these comforts, relieving the body from the torturing wants of cold and hunger, placed the mind in a condition to pursue its improvement. This, Mr. President, is the true secret of the happy advance which the Southern tribes have made in acquiring the arts of civilization; this has fitted them for the reception of schools and missions; and, doubtless, the same cause will produce the same effects among the tribes beyond, which it has produced among the tribes on this side of the Mississippi.

The right of way is indispensable, and the committee have begun with directing a bill to be reported for that purpose. Happily, there are no constitutional objections to it. State rights are in no danger! The road which is contemplated will trespass upon the soil, or infringe upon the jurisdiction of no State whatsoever. It runs a course and a distance to avoid all that; for it begins upon the outside line of the outside State, and runs directly off towards the setting sun. The Congress and the Indians are alone to be consulted, and the statute-book is full of precedents. Protesting against the necessity of producing precedents for an act in itself pregnant with propriety, I will yet name a few, in order to illustrate the policy of the Government, and show its readiness to make roads through Indian countries to facilitate the intercourse of its citizens.



1. A road from Nashville to Natchez, through the Chickasaw and Choctaw nations, by an act of Congress of 1806—appropriation, \$6,000.

2. A road through the Creek nation from Athens, in Georgia, to the 31st degree of north latitude, in the direction to New Orleans—act of 1806—appropriation, \$6,400.

3. A road from the Mississippi to the Ohio, through the north-west territory—act of 1806—appropriation, \$6,000.

4. Three roads through the Cherokee nation, to open an intercourse between Georgia, Tennessee, and the lower Mississippi, by treaty of 1805.

5. A road from Shawneetown to Kaskaskia—act of 1816—appropriation, \$8,000.

6. Repairing the road from Nashville to Natchez, within the Indian nations—act of 1816—\$7,920 appropriated.

7, 8, and 9. By acts of 1824, that is to say, at the last session of the present Congress, and by the same members to whom I now speak, and sitting in the same chairs in which they now sit, three roads were authorized to be made. One from the Chickasaw Bluffs, on the Mississippi, to Little Rock, in the territory of Arkansas—\$15,000 appropriated. One from Pensacola to St. Augustine—appropriation, \$20,000. One from the State of Ohio to Detroit—appropriation, \$20,000.

These instances are enough, in all conscience, to show the readiness of the Government to open roads through Indian territories. But, in following out the road from Missouri to Mexico, a perverse circumstance intervenes; we are met in the way by the boundary line of the United States, and a road upon foreign territory is a novel subject of legislation in the American Congress. Mr. President, I had always been opposed to this boundary of 1819. I was opposed to it as a line inconvenient in itself, not adapted to the localities of the country, uncovering the flank of Louisiana, dismembering the valley of the Mississippi, cutting off a province to which our title was admitted, placing a foreign people upon the heads of our rivers, and giving them a right (under the law of nations) to navigate those rivers through the heart of Louisiana. For these reasons, and two more, which I have not enumerated, I had always been opposed to the boundary line of 1819; and I liked it still less, when I found it a stumbling-block in my road to Mexico, and a protecting barrier to the cruel Camanches, who kill and rob our citizens. It is true, I could see no reason for not continuing the road with the consent of the Mexican Government, through the unoccupied territory of that power; but the novelty of the thing was appalling; and gentlemen might call for a precedent, although they should find it impossible to start an argument against it. Well, sir, I have a precedent; one which is strictly analogous, directly in point, up to the exigency of the occasion; one which needs not the bed of Procrustes to fit it to the case for which it

is wanted. I speak of a road from Georgia to New Orleans, in the year 1807, under the administration of President Jefferson.

In the year 1806, the President had been authorized to open a road from the frontier of Georgia to the 31st degree of north latitude, in the direction of New Orleans. In the year 1807, he was authorized to continue the same road from the 31st degree to the city of New Orleans, under such regulations as might be agreed upon with the Government of Spain. The first part of this road lay through the territories of the Creek Indians; the second, through the dominions of the King of Spain. It is the prototype of the road from Missouri to Mexico. The two sections of the bill which we have before us, are nothing but transcripts, with a change of names, from the two acts of 1806-'07. Here are the acts:

#### ACT OF 1806.

"Sec. 7. That the President of the United States be, and he hereby is, authorized to cause a road to be opened from the frontier of Georgia, on the route from Athens to New Orleans, till the same intersects the thirty-first degree of North latitude: *Provided*, he shall not expend more than \$8,400 in opening the same."

#### ACT OF 1807.

"Sec. 2. That the President of the United States is hereby authorized to cause a road to be opened from the thirty-first degree of North latitude to New Orleans, on the route from Athens to New Orleans, under such regulations as may be agreed upon for that purpose, between the Executive of the United States and the Spanish Government; and he is hereby authorized to expend, in opening the same, any part of the money heretofore appropriated for opening a road on the said route from the frontier of Georgia to the thirty-first degree of North latitude, which remains unexpended."

For a knowledge of this precedent, I am indebted to a conversation with Mr. Jefferson himself. In a late excursion to Virginia, I availed myself of a broken day to call and pay my respects to that patriarchal statesman. The individual must manage badly, Mr. President, who can find himself in the presence of that great man, and retire from it without bringing off some great fact, or some maxim, of eminent utility to the human race. I trust that I did not so manage. I trust that, in bringing off a fact which led to the discovery of the precedent, which is to remove the only serious objection to the road in question, I have done a service, if not to the human family, at least to the citizens of the two greatest Republics in the world. It was on the evening of Christmas day that I called upon Mr. Jefferson. The conversation, among other things, turned upon roads. He spoke of one from Georgia to New Orleans, made during the last term of his own administration. He said there was a manuscript map of it in the Library of Congress, (formerly his own,) bound up in a certain volume of maps, which he described to me. On my return to Washington, I searched the statute

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book, and I found the acts which authorized the road to be made; they are the same which I have just read to the Senate. I searched the Congress Library, and I found the volume of maps which he had described; and here it is, (presenting a huge folio,) and there is the map of the road from Georgia to New Orleans, more than two hundred miles of which, marked in blue ink, is traced through the dominions of the King of Spain!

With this triumphant precedent, I leave the fate of the bill to the wisdom and to the justice of the Senate.

Mr. CHANDLER put one or two questions on the subject, which were answered by Mr. BENTON, as to distances, &c., after which

The bill was, on motion of Mr. CHANDLER, laid over until to-morrow.

WEDNESDAY, January 26.

*Internal Trade between Missouri and New Mexico.*

The Senate proceeded to the consideration of the bill to authorize the President of the United States to cause to be marked out a road from the line of the State of Missouri, to the confines of New Mexico.

On motion of Mr. LLOYD, of Massachusetts, to strike out the second section of the bill, (which provides for marking out that part of the road in the Mexican territory.)

Mr. CHANDLER said, that he had not yet been satisfied that Congress had a right to take the money from the pockets of the people of the United States, to lay out or expend in what is termed internal improvements, that is, to make roads and canals within the limits of any State in the Union. Gentlemen may tell me that this proposition does not come within the objection, as it is without the limits of any State; true, from five to seven hundred miles of the contemplated road are within the limits of the United States, and probably at least three hundred miles of it, not only without the limits of any State, but out of the limits of the United States, and within the territory of another power, to wit, that of Mexico. As I before observed, I have never been able to find, in the Constitution of the United States, authority given to Congress to lay out and make roads within the limits of any State in the Union, and there would, at least, be as much difficulty in finding authority for taking the money of the people, and therewith to mark out or survey roads within the dominions of another sovereign power. By the bill, sir, I perceive that we are to provide by treaty with the Indians, for the right of passing unmolested through the territory which they inhabit, and if those Indians should afterwards prove refractory, or take it into their heads to refuse us a passage through the country which they inhabit, why then, I suppose, we must submit to their caprice, or make war upon them, within the territory of Mexico. For, I presume, the line of this road

will not be the line which divides that part of the country which is inhabited by Indians, from that which is not; nor is it probable that the line between the United States and Mexico will divide the country which is occupied by the Indians from that which is not. Viewing the whole subject as I do, sir, I must be better satisfied of the propriety of the measure than I now am, or I cannot vote for the bill.

Mr. BENTON observed, he could answer the gentleman's objection with great ease. They were only going to treat with the Indians within the territories of the United States, and afterwards mark out the road through the Mexican territories, with their consent.

Mr. LLOYD, of Massachusetts, asked, whether it would not be acceptable to the honorable mover of this bill, to limit the intended road to the boundary of the United States? There was a very great difference between making a road in our own territory, and in that of another power, even with their own consent. He thought there was a strong impropriety in making roads for other people. However, he wished no argument on the subject, but would move to strike out the second section of the bill.

The second section is as follows:

"And be it further enacted, That the President of the United States be, and he hereby is, authorized to cause the marking of the said road to be continued from the boundary line of the United States to the frontier of New Mexico, under such regulations as may be agreed upon for that purpose between the Executive of the United States and the Mexican government."

Mr. LOWRIE said, if this appropriation could be asked for at all, it was on the ground of protecting the commerce of the United States; and if that principle were admitted, it would require some ingenuity to show why an appropriation, which was to be expended beyond the territory of the United States, should not be made to the West, when so much was doing, and had been done, for the East? He adverted to the sums annually expended in keeping a fleet in the Mediterranean for the protection of commerce; and mentioned, as a case strongly in point, the negotiation opened by the Executive, during the last summer, with foreign Governments respecting the erection of a light-house on one of the West India islets.

Mr. BARTON said, this bill amounted to nothing more than a declaration by Congress of a power exercised by the President of the United States in the case just mentioned. The duty and the power of the Executive will remain precisely the same; as the bill merely requests the President to cause a thing to be done, under certain regulations, which he had the power to do without the request. He could see nothing in this section incompatible with the rights or dignity of the Government. He hoped, therefore, the section would not be stricken out.

Mr. HOLMES, of Maine, thought there was no constitutional objection to the proposed measure, as the Government might, if they thought proper,

make a road in the territory of a foreign power, as well as within our own, provided they obtained the consent of that power. The Mexican Government were equally interested with the United States in the prosperity of this trade, and therefore, if they thought it worth their while, they would and ought to do their part. It would be sufficient if we were to mark out the road to the boundary line, and let them meet us there. We were, in his opinion, a little premature in offering to mark out a road through the whole line, in their territory as well as our own, and then to ask for permission to mark it out beyond the boundary. The Mexican Government must be aware of the value of the trade, and if they did not choose to meet us, it would be a fair presumption that they did not want to trade with us. He should, therefore, vote for the amendment.

Mr. VAN BUREN thought that the Government was called upon to afford the same protection to these people, who were engaged in a foreign trade, that was extended to those of the other parts of the Union. The only questions were, whether this trade existed, and whether it was a trade according to the laws and constitution. If so, they have a right to call on the Government for protection; provided it could be given without infringing on any rights. The means proposed were, to mark out a road, and treat with the Indians for a safe passage. The motion to amend the bill was founded, he thought, on a mistaken view of the subject. It was not to *make* a road, that the appropriation was asked for, but to *mark out*, merely, the way the traders should go. This was to be done by negotiation with the Indians on this side of the line, and by negotiation with the Mexican Government, on the other side; and the appropriation of \$30,000 was for this purpose. He did not apprehend, therefore, that any valid objection could exist. They were not going into a foreign country to make a road, but to treat with the Indians, and mark the way they should travel.

Mr. MAOON did not think this a matter of great importance. Most of the estates, said he, in my part of the country, were originally made by trading with the Indians, and that trade was carried on by traces; but we have got grander than our ancestors, and can't trade with the Indians now without roads being made. I don't care, said he, for precedents; if they are good, I am willing to follow them; if not, I won't regard them. They are, generally, good or bad, as they happen to suit or oppose our wishes. The case of the road made by Mr. Jefferson, was among Indians comparatively civilized, who had some notions of property; but the road proposed now to be marked out, would pass through tribes perfectly wild, who, as soon as they see a white man, think of nothing but to fight and kill him, if they are able. There was nothing that could be secured by negotiating with these wild and savage people. Make what bargain you please with them, they will continue to commit depredations on your traders, whenever they see a

good opportunity. It would, therefore, do no good to treat with them. As to the Spaniards, with whom this trade was carried on, Mr. M. said they may have a great deal of money, but, generally, money and knowledge went together; and, though he could not say any thing of their character himself, the description given of them, yesterday, by the gentleman from Missouri, was not very favorable. But, Mr. M. said, as the friendship of these Indians could not be bought, he thought it would be safer for the traders to go through their country by different routes, than to have but one, which would give the Indians the best opportunities for ambush, and committing depredation and murder.

Mr. JOHNSON, of Kentucky, said that he was always happy to have his worthy friend from North Carolina, (Mr. MAOON,) with him in any measure of legislation. He recollected that, during the session, his friend had supported him in a very important proposition, and he should not forget the delight which he experienced in having with him a member so distinguished for long services and integrity of principle. On this occasion, he had entertained some hopes that the gentleman from North Carolina would agree to appropriate \$10,000, to find out the best and most direct trace for the enterprising citizen of the West to pursue his trade to Santa Fe, and the western parts of Mexico, when the West had never hesitated to vote for any measure which was necessary to protect the lives or property of our seafaring citizens. Do you call for fortifications? We vote the money to make them. Do you want an increase of the Navy, to secure our commerce upon the high seas, and to secure our seaboard in case of war? We grant the sum necessary to accomplish the object. Do you want additional sloops of war, and additional means to suppress piracy? We give the money, till the Executive Government says "enough." You have asked for \$500,000 this year, to suppress piracy in the West Indies: we are ready to give it. We ask for \$10,000, to facilitate our trade with Santa Fe, and to take measures to secure our enterprising citizens in their lives and their property while pursuing that lucrative and important trade. The pirates in the West Indian seas are stealing the property of our citizens, and murdering the officers and crews of your merchant vessels, without regard to age or sex; and annually, upon our interior and territorial frontier, our citizens are murdered by the natives of our forests. Every blast which crosses the great mountains of the Alleghany, brings the groans of the dying enterprising trader of the West, murdered by the Indian. Do not our citizens stand upon an equality, whether they be upon the high seas, or in the great American desert, extending to the Rocky Mountains? I feel the same indignation, whether I see the hands of the pirate, or the hands of the savage of the wilderness, imbrued in the blood of our fellow-citizens. I feel the same indignation, whether that citizen be a hardy tar of the ocean, a citizen of the Rocky Mountains, or a resident of this metropo-

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lis. Another view is presented to my mind: we have many objects of national expenditure in the West, and it is the duty of Congress to make annual appropriations, out of the funds of the Government in the West, towards these objects—additional military posts should be established—the Cumberland road should be extended to Missouri—a western armory should be erected, and a military armory should be established in some part of the Western States. I hope Congress will not forget the provision in the constitution, as to the regulations of commerce with foreign nations, among the several States, and *with the Indian tribes*. While we build our ships of war, erect fortifications, and appropriate millions for the security of commerce and defence of our maritime frontier, we ask the sum of \$10,000 for a great and important object of internal trade, and the security of those concerned in it in the Western country. Can this appropriation be denied to us? I presume it cannot. We have done nothing more than our duty, in doing all we have done for foreign commerce, and for the security of our maritime frontier; nor can we refuse what is necessary for the commerce and security of the West.

Mr. MACON replied, that the case of the light-house, in the West Indies, could hardly be called a precedent, that it was not done by authority of Congress. As to the expense of protecting commerce in the West India seas, from pirates, &c., Mr. M. said it was as much for the benefit of the people of the Western States, as of any other part of the Union, as the products of the West were necessarily transported through those waters, and the people who furnished the cargo, were as much interested in the safety of the commerce, as the owner of the vessel, &c.

Mr. KELLY, of Alabama, said, he trespassed with great reluctance on the attention of the Senate. The great object of the bill is to cherish and foster a commerce already in existence, between the American and Mexican republics. That commerce, to be mutually beneficial, must be regulated and protected, and placed upon a footing of safety and reciprocity by the respective Governments. This commerce must be carried on by land, through several Indian tribes. To be safe, a road must be had, a right of way, or a *trace*, if you please, secured. To answer the object, this trace must pass the boundary of the United States, and extend for several hundred miles through the wilderness country, in the Mexican republic, to the settlements with whom the traffic must be carried on. Now, sir, to stop the "*trace*" at the boundary of the United States, would leave this intervening Mexican wilderness to obstruct the proposed intercourse. Why should this be left? I cannot agree, said Mr. K., with the gentleman from Maine, (Mr. HOLMES,) that we have done enough in going to our own boundary, and that we may leave the balance to the Mexican Government. It may be well to remember that the Mexican Government is in the germ of its existence, struggling with difficulties that we have long since surmounted;

and, without intending any disrespect to the population of Mexico, we may say, in the most friendly manner, that they are less intelligent in commercial matters than we are; and, although, to us, the advantages of this commerce are clear and obvious, they may not be so to them; and, however reasonable the calculation may be that they will meet us at the boundary line, and mark the trace through their own territory, I cannot help feeling some doubt, myself, that they may fail to do so as promptly as the commerce in question requires it should be done. It occurs to me, then, as the most rational mode of legislating on this subject, to approach the Mexican Government in a language best of all calculated to obtain promptly the object in view. It may be true, as stated by the gentleman from North Carolina, (Mr. MACON,) that, in days of yore, many persons made fortunes by traffic with the neighboring Indians, when they had to trudge along "*a trace*;" and, although this be true, as a fact, I am still willing to travel on a road, when I can find one; and this, it seems to me, may be done by the men of the present day, without incurring the charge of irreverence to their ancestors. And, although this traffic may have been thus profitable, without the aid of Government, I am confident it would have been on a better footing if it had been under the protection of the Government. I have no idea that Indian depredation is to cease on the establishment of this trace, but I believe that less blood will be shed, and less property plundered, under proposed regulations by the Government, than it can be if left to unaided individual enterprise.

Mr. TALBOT thought, that, if the section were struck out, the effect of the bill would be destroyed. He argued to show that it would be far better, before commencing the road, to enter into negotiation, and arrange every thing with the Mexican Government; because, if the United States were to adopt a route, and do their part without an understanding with the other Government, the route might not be located to please the Mexican Government, and the money expended would be wasted. Why not retain the section that authorized the negotiation with the Mexican Government for every thing that was required?

Mr. SMITH thought that the advantages of this commerce might be held out to the Mexican Government, and when they found that they could get their goods on more reasonable terms, they would be induced to join with the United States in making this road. He should vote for the bill, but from a different view of it from that taken by his friend from Kentucky, (Mr. JOHNSON.) Mr. S. thought that sufficient occasions for expending the public money always presented themselves, without seeking them; he repelled the assertion, that the interest of the Eastern States had always been preferred to that of the West—and asserted that the Eastern members voted for all the measures beneficial to the people of the West. He cited many great

objects of expense: the Cumberland road; the military works at Mackinaw, and on the Lakes, &c., to show that the interests of the West were not neglected. He did not like the argument that went to prove that one part of the Union was hostile to the other. The only question with him was, whether commerce could be carried on there to advantage, and, as he was satisfied it could be, he should vote for the bill.

Mr. BROWN was very glad to hear such sentiments fall from the honorable gentleman, and hoped that a reciprocal good feeling would always exist. He thought there could be no objections to the bill, and approved the proposition to treat with the Mexican Government. He differed from his friend from North Carolina, (Mr. MACON.) This was something more than Indian trade, and it did not at all follow that, because, in former times, large fortunes were made by the Indian trader, who had traces, that no road should be marked out now.

Mr. LLOYD, of Massachusetts, had been very much misunderstood if he had been supposed to make the motion with feelings hostile to the bill—he was in favor of it—the mere trifle of money proposed, was nothing—he was opposed to the principle of laying out money in the territories of a foreign power. If it were for the mutual advantage of both parties, the Mexican Government would of course be as ready as we were; but, if it were not, then they would not suffer us to enjoy it. As to the expenditures made for the protection of commerce on the ocean, Mr. L. said it was for the benefit of all—it was not a local interest. The only way that the revenue was procured, was by commerce, and it was the duty of the Government to afford it every protection in its power. He should be pleased to see the road opened; it would pass through a most fertile country, and open a communication between, as the gentleman expressed it, two of the most splendid republics in the universe. Would not the Mexican Government, having a population of seven millions of souls, and gold and silver mines at command, furnish \$3,000 for her share? Yes, if the project pleased them, they could give five hundred times as much; and, if they did not like it, that was another consideration. If the gentleman would alter the phraseology of the bill as Mr. L. had suggested, he would vote for it.

Mr. BENTON was well aware of the weight of the objection urged by the honorable gentleman from Massachusetts, and he was satisfied also that the gentleman was not influenced by pecuniary motives. It was naturally a question of policy, and a subject to which his attention had been previously turned by the precedent he had yesterday cited in justification of the section proposed to be struck out. Although this proposition went by the name of a road, yet, Mr. B. said, it was not so in fact; all that was proposed to be done, was to cast up mounds of earth and sand, and pyramids of stones, to mark out the way. Without a figure, they might be called light-houses; for they were, in point of fact,

guides to the passenger. The present measure differed from the act of 1807, authorizing a road to be opened through Florida in two points: that road went through the settlements belonging to the King of Spain, and was a road, properly speaking; this was merely a track, and passed only through the unoccupied parts of the Mexican territory. It was argued that, if this trade were beneficial to the people of Mexico, they would meet us half way; but it was very easy to imagine a trade that was more beneficial to one party than another. We, said Mr. B., are the carriers, and it is we who have need of the road to travel upon; but it is idle to expect that these people will make roads; they are blinded by ignorance. As an instance, he mentioned that the province of New Mexico has been established for more than 150 years. The commerce between Mexico and Santa Fe is carried on by means of mules; the journey there and back occupies five months; and, during the whole period mentioned, has passed but by one route; yet it is a fact, that, on this whole route, there is not such a thing as a bridge, except such as are composed of poles put side by side, such as only our dogs would cross, and such holes were suffered to exist in them, that our men, and even our dogs, would be in danger of breaking their legs. If, then, for so many years, they have not thought it worth while to make a better road for this valuable branch of commerce, how are we to expect them to co-operate here? We are not to expect any thing more from them than the privilege to mark out the way.

The question was then taken on striking out the second section, and negatived—ayes 15, noes 28; and the bill was ordered to a third reading, by the following vote:

YEAS.—Messrs. Barton, Benton, Boulogny, Brown, D'Wolf, Eaton, Edwards, Elliott, Holmes of Mississippi, Jackson, Johnson of Kentucky, Johnston of Louisiana, Kelly, Knight, Lanman, Lloyd of Massachusetts, Lowrie, McIlvaine, McLean, Noble, Palmer, Parrott, Ruggles, Seymour, Smith, Talbot, Taylor, Thomas, Van Buren, Van Dyke—30.

NAYS.—Messrs. Branch, Chandler, Clayton, Cobb, Gaillard, Hayne, Holmes of Maine, King of Alabama, King of New York, Macon, Tazewell, Williams—12.\*

The following is the act as passed:

\* *Be it enacted, &c.*, That the President of the United States be, and he hereby is, authorized to appoint Commissioners to mark out a road from the Western frontier of the State of Missouri, to the boundary line of the United States, in the direction to Santa Fe, of New Mexico: *Provided*, That the said Commissioners shall first obtain the consent of the intervening tribes of Indians, by treaty, to the marking of the said road, and to the unmolested use thereof to the citizens of the United States, and to the Mexican Republic.

Sec. 2. *And be it further enacted*, That the President of the United States be, and he hereby is, authorized to cause the marking of the said road to be continued from the boundary line of the United States to the frontier of New Mexico, under such regulations as may be agreed upon for that purpose between the Executive of the United States and the Mexican Government.

Sec. 3. *And be it further enacted*, That the sum of ten thousand dollars be, and the same hereby is, appropriated, to defray the expenses of marking the said road; and the further sum of twenty thousand dollars, to defray the ex-

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Suppression of Piracy.

[SENATE.]

MONDAY, January 31.

*Suppression of Piracy.*

The Senate proceeded to the consideration of the bill "for the Suppression of Piracy in the West Indies;" the motion to strike out the third section, which authorizes the blockade of the ports of Cuba, (under certain circumstances,) being still pending—

Mr. MILLS rose, and said, this bill has already undergone a full discussion, and the chairman of the committee has acquitted himself so entirely to my satisfaction, that I do not wish to trench on the ground which he has so ably occupied.

The first question that presents itself is, what is the object of the bill now before us? Sir, it is the suppression of piracy, the foulest crime of which man can be guilty—a crime which shuts him out of the pale of civilized society, renders him the enemy of the whole human race, and amenable to the laws of every civilized country—a crime, of the perpetration of which it may truly be said, that "his hand is against every man, and every man's hand against him." The next inquiry is, is it necessary that any further legislative measures should be resorted to, to effect this object, so desirable in itself? Have we now sufficient provision by law, without legislative aid for the suppression of this most atrocious offence? Sir, I shall not enter into the horrid detail of the cursed atrocities of these monsters, and of the abominable extent to which they have carried their depredations. The tidings are wafted to your ears on every gale. The representation of respectable individuals, the communications from your authorized agent on the island, the united voice of the whole commercial part of the country, the official reports of the Navy Department, and the recommendation of the President, all combine to stimulate you to provide some legislative measure for the suppression of these horrors. I hope, then, you will not turn a deaf ear to these united and repeated applications. It seems the unanimous opinion that some new proposition should be adopted; that the legislature should do something; and the great question is, whether the measures recommended by the committee are suitable and proper for the emergency? To some of these propositions no objection has yet been made, and I trust none will be. And in deciding the question that is submitted to us, we must look to the practical and probable results of it. This appears to me to be the part which wisdom would dictate. We ought not to be deterred by remote and possible inconveniences, embarrassments, and dangers, much less by imaginary difficulties, from prosecuting that course which promises the most beneficial results. It is very easy for ingenuity to start objections to almost any course, and if these

objections are listened to on every occasion, no measure of importance would ever be adopted.

The motion now immediately before the Senate is, to strike out the third section of the bill. To decide this question, we must not look at the third section of the bill, alone and insulated, but see how it is connected with the other parts of the bill, and what bearing it has on them. To examine what tendency it has to assist in carrying into effect the previous provisions contained in the bill, more especially is it necessary to compare its provisions with those of the second section.

The twenty-ninth section authorizes the commanders of our armed ships in fresh pursuit, to land on the coasts of this island, to capture and destroy the pirates. Now, sir, the third section is intended to strengthen this power, and ensure its execution in case of the single event of their taking refuge in any of the ports or cities of the island, and there finding protection. On this condition alone, is it that the third section will ever be brought into operation.

It is said that the third section provides for blockade, that blockade is a war measure, and only to be resorted to *flagrante bello*, as one of the rights of war. Sir, I agree to this general proposition, and regard a blockade in time of peace as somewhat of an anomaly, but entirely justified by the anomalous situation in which we are placed: for, such is our situation, that none but an anomalous remedy can be efficaciously applied to the evil. It is often necessary to shape our course according to circumstances, and adopt under one set of circumstances, a measure, which, under others, would be improper if not totally unjustifiable.

But, sir, with whom are we at war? Are we at war with Spain? No sir. Shall we, when a blockade is instituted under the limitations contained in the third section of the bill, be at war with Spain? No, sir. It is only an additional remedy for the suppression of this enormous evil—the only means of securing the success of the enterprise. With whom, then, are we at war? With none but those with whom all the nations of the earth are at war—with pirates. On what terms is this blockade to be instituted? After they have found shelter and protection in the ports of the island; when the civil power has thrown over them the shield of authority; is this to be submitted to? Can Spain complain with any shadow of justice? If she is unable to check the progress of these bandits, and if she really wishes to discharge the great duty she owes to the whole civilized world, so far from uttering a complaint, she will co-operate with us in any measures we may adopt for its suppression. If the local authorities are conniving at these depredations, and sharing the spoil with these robbers, and they find refuge and protection from them, then nothing can be more clear than that they make themselves a *particeps criminis*, accessories after the fact, and are liable to the same punishments as the pirates themselves. In this case you only blockade a

penses of treating with the Indiana, for their consent to the establishment and use thereof; the said sums to be paid out of any money in the Treasury, not otherwise appropriated.

port which has been converted into a den of pirates, and put itself out of the protection of the laws of nations. Spain must place herself in this situation, as companion of the pirates, if she complains, under these circumstances, that you invade her rights of sovereignty by taking them in their fastnesses. But, sir, we do not impute any such designs to Spain; we do not suppose she wishes to encourage these villainies; we impute it alone to her imbecility that they are suffered to exist, and the whole civilized world will justify us in our proceeding.

Suppose, sir, that, whilst we were in fresh pursuit of a piratical vessel, she should come athwart a Spanish armed ship, and that ship should shelter the pirates with her guns, would it be an attack on the sovereign rights of Spain if you were to reclaim the piratical vessel, and if necessary, to force her from the vessel that was thus protecting her? Could Spain complain of this with any justice? No, sir, she could not. By the act of affording them shelter, in this fresh pursuit, they would make themselves pirates, and subject themselves to the punishment due to pirates. Where then is the difference between protection extended to a piratical ship on the ocean, and protection extended to a piratical crew on land? Let us suppose, sir, that this piratical vessel, instead of seeking protection under the guns of a Spanish ship, runs into the harbor of Havana or Matanzas, and there finds protection from the civil power. In this case, it is my opinion, sir, that a much more rigorous measure than blockade would be perfectly justifiable. I will not say how far the strict laws of nations would justify our proceeding in this case, but I feel no hesitation in saying that they would deserve to have the town bombarded about their ears, instead of feeling the comparatively trifling inconvenience of a blockade. It is impossible that, in a case like this, you can apply the laws of civilized warfare. They are not in any way applicable. Your enemy is entitled to none of their humane provisions; he is not a prisoner of war when taken, but a culprit liable to be tried by the tribunal of any civilized power, and subject to condign punishment. There are no rules of civilized warfare that can be extended to him.

It is to be observed, then, that the object of this provision is not to humble Spain, or to interfere with her rights, or trench on her sovereignty, but to punish the outlaws of every nation. *Parcere subjectis et debellare superbis*, is as often a maxim of justice and policy, as it is of magnanimity; but where and to whom is it applied? To those who acknowledge their error and evince a disposition to atone for it, and not to those who, though weak and imbecile, continue their depravity and heap insult upon injury. However weak such a power may be, it is neither politic nor just always to spare them.

But not only Spain, we are told, will be injured, but other nations may take umbrage at

this course—nations who are called neutrals. Sir, I should be glad to know who are neutrals in this warfare? There are none. The whole civilized world are our allies in this conflict, and will cheerfully unite with us in our efforts to subdue them as well as our enemy. Sir, by a fair construction of the provisions of this section, and a prudent exercise of the powers vested in the Executive, I think we shall avoid giving offence to other powers. May we not presume that these powers *will* be prudently exercised? Are we to withhold all power, from a jealous apprehension that that power will be abused? Can we imagine that the Executive will institute a blockade, and rush into difficulties, and precipitate the nation into a war without cause, without necessity?

Sir, I entertain no such suspicion. A reasonable confidence must be placed in the depositaries of power. I am willing to place that confidence, and will go as far as any man to hold the Executive responsible for the faithful exercise of that power; but I am not willing to weaken and paralyze his efforts by any unreasonable suspicion. The course indicated by the third section of the bill, will unquestionably be faithfully pursued by the Executive; negotiations will be pursued, arrangements made, and an understanding will be effected with other nations, if it should ever be necessary to exercise this power conditionally invested in the President on this occasion. But, sir, why should we be more scrupulous on this subject than other nations? Look at Great Britain—more than once she has landed on the coasts of these islands, and scoured the country in pursuit of these marauders; and once, at least, if newspaper authority is to be depended on, she has instituted a strict blockade of the inlets and harbors of the whole Isle of Pines, to secure the success of this pursuit. What was the result of this bold measure? An American vessel and cargo were snatched from the grasp of these robbers, and the crew rescued from death—the bloodhounds were hunted from their dens and fastnesses—were shot down like wild beasts, or captured and deservedly consigned to the gibbet. What, further, was the result of this measure? Twelve vessels, dismantled and plundered, were found concealed in one of these inlets, and, horrible to relate, not one human being of all their crews, left to tell the dismal fate of his comrades; and will you, with such evidence as this before your eyes, with all this horrible detail brought to light, will you speculate and refine with metaphysical subtlety on the rights of sovereignty, and the sanctity of territorial dominion, instead of adopting the only measures that can suppress the evil? Is not this the very case where “right goes hand in hand with necessity and the exigency of the case?” Sir, it seems to me that, if a case can be found where that well-known principle of the law of nations is to be applied, this is the very case, and you are right in making use of all the means necessary to



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accomplish the object—those means are pointed out by the third section of the bill, and are not such as transcend the necessity of the case.

Mr. LLOYD, of Massachusetts, said, in expressing his opinion he must be allowed to take a very brief historical view of the subject. At the commencement of the session, on the opening of Congress, we were informed by the President, in his message, that "the piracies now complained of are committed by bands of robbers who inhabit the land, and who, by preserving good intelligence with the towns, and seizing favorable opportunities, rush forth, and fall on unprotected merchant vessels, of which they make an easy prey; that the pillage thus obtained, they carry to their lurking places, and dispose of afterwards, at prices tending to seduce the neighboring population. "This combination," the President says, "is understood to be of great extent, and is the more to be deprecated, because the crime of piracy is often attended with the murder of the crews; these robbers knowing, if any survived, their lurking places would be exposed, and they be caught and punished."

The Secretary of the Navy, in his letter to the President, accompanying the message, fully confirms this account; and further states, that there are now few, if any, piratical vessels of a large size in the neighborhood of Cuba, and that none are seen at a distance from the land; but the pirates conceal themselves, with their boats, in small inlets, and finding vessels becalmed, or in a defenceless situation, assail and destroy them, and when discovered, retreat into the country, where, by the apprehensions they create, and the plunder they have obtained, they remain secure, and mingle, at pleasure, in the business of the towns and the transactions of society, and acquire all the information they want to accomplish their purposes. Against such a system as this, the Secretary observes, no naval force, within the control of the Department, can afford complete security, unless aided by the local authorities; and, unless this co-operation be obtained, additional means should be intrusted to the Government, to be used in such manner as experience may dictate.

We have thus obtained, in the most formal and official manner, direct, unequivocal information, of the existence of these atrocities, of the inability of the navy to suppress them, and of the additional means necessary to be intrusted to the Executive, and referred to in the message. These means, as before stated, are, pursuit on shore, reprisal, and partial blockade of the offending ports. The committee recommend the mildest of these alternatives, the blockade, which is, however, denounced by the highly respectable and able gentleman from Virginia, as being an interpolation on the law of nations; as breaking down the moral force of the Republic, and as a just cause of offence, if not of war, to other nations.

Sir, from whom is this advice received? From men ranking among the most distinguish-

ed civilians of the age, possessing your entire confidence, who have been drilled in diplomacy by a forty years' experience, who have spent their lives in advocating the rights of neutrals, and grown gray in turning over the works of Grotius, and Vattel, and Puffendorf, and Ward, and Azuni, and a host of other authors, with whom I can boast no acquaintance.

In reference, therefore, to the source from whence the recommendation is derived, as well as to the feeble lights of his own understanding, he denied the soundness of the inferences that had been drawn; and without even making any more recondite research than to an elementary work, an humble one in some respects, he would contend, that the major proposition includes the minor; the whole embraces all its parts; and that, if you have justifiable cause of war against Cuba, or against Spain, you have the right to mitigate the evils of war, by the adoption of any milder course you may think proper to pursue.

It is true, if you blockade a single port of the island of Cuba, Spain may be authorized to declare war, and perhaps be joined by her allies, if she and they choose it; and this would undoubtedly be attended with great injury to us. Peace is the polar star of the interest of our country; but, if it is only to be preserved at the expense of the continued murder of our citizens, and the plunder of our property with impunity, then, for one, he was ready for war; and how much soever of injury it might entail, it would be accompanied with one consolation, derived from the experience of the last war; which was, that, whatever nation chose to go to war with the United States, it would carry them forward in their progress to maturity, *per saltum*, half a century at a jump.

But we are told, other nations will take umbrage at this: that, although blockade is a beligerent right, and we impose it, we are still not at war.

What have other nations to do with this question? It belongs exclusively to us and to Spain. When two nations go to war, who constitutes, without their consent, a third party to determine who is right, or who is in the wrong? All other nations have a right to demand, is, that, in the prosecution of the quarrel, the rights of humanity shall not be outraged, and that the usages of war shall be observed as regards them. What have they then a right to require, as it regards a blockade? simply, that you shall not entrap them—that you shall give them due notice, a sufficient warning, and that you shall keep up a close, rigorous, unremitting investment, by a sufficient force; if you do this, you perform all your duties as regards them—all the rest lies between the party blockading and the party blockaded.

But, we are asked, suppose we find these offending neutrals in the den of robbers, in the lair of these wild beasts, at the time we invest it, what will you do with them? It is answered, give them the right of egress precisely in



the state they were at the time the blockade was imposed; after this, strictly keep them in, and keep them out. This is all they have a right to expect. If they are in bad company, they must feel the effect of it.

Is a formal parchment declaration of war at all times necessary or usual among nations? If it is, what was the state of our quasi war with France, in 1798? Where was the proclamation of France, when she blockaded Cadiz, and kept out, not only merchant vessels, but our messenger of peace, in a national vessel? Where was the proclamation, when the British pounced upon the Spanish frigates and captured them, with their treasure, during the late wars between France and England? Where the proclamation, when she sent her fleet up the Cattegat, blockaded and bombarded Copenhagen, and destroyed the Danish fleet? These cases are adduced as showing that, between third parties, a declaration of war, if you choose it, is not considered indispensable, as to usage, not as approving them.

Have you abundant cause of war against the inhabitants of Cuba? Look at the accounts of your official agent; you find from them, that these murderers and robbers are well known, are connected with the inhabitants, and suffered, if not protected, by the local authorities; and even the Governor General, whose good dispositions are so much spoken of, tells you frankly, when applied to for the aid of Government, that, so deeply implicated are all the inhabitants of Regla, where a quantity of plunder was known to be secreted, that he dare not make the investigation—it might create a rebellion.

Sir, with something more than delicacy, with an approach to fastidiousness, we have kept out of sight the enormities we are suffering; it must be useful, however, to have an occasional and sparing reference to them. He should cite briefly only three instances: The first was that of the *Alert*, commanded by a very respectable citizen of Portsmouth, in New Hampshire—Captain Blunt. This vessel, bound from New Orleans, was becalmed off the Moro Castle; a boat approached, when the first wretch that crossed the gunwale, ran the captain through the body, who was afterwards cut to pieces, and the only vestige that remained of him in the morning, was his slippers, overflowing with blood; the crew were abused, and the cook, asleep in the steerage, was lacerated in the most cruel and wanton manner, and his mangled corpse thrown to the hogs, who were seen the next day fattening on his entrails.

The next case is that of the *Laura Ann*, already before the Senate; this was a vessel belonging to New York, boarded by pirates, at a short distance from Matanzas, when bound to the Havana, who, after beating and inhumanly hanging the captain, butchered the crew; but probably discovering, from a critical comparison of the shipping paper, with the number of the dead and dying on the deck,

that there was one still wanting, they descended into the hold, exclaiming, in their barbarous language, *une mus*—one rat left; pricked, with their knives and swords, to find out the deficient sailor, and, lest he should not have escaped torture by drowning, on not finding him, set fire to the vessel, in order that, if on board, he might be consumed with it; on the flames reaching him, he crawled on deck, and finding the pirates were off, dropped overboard, and happily reached the shore.

The last case he should cite, was one that has not before been distinctly presented to the Senate; it is of recent date, and was now on his table in manuscript, duly sworn to. It furnishes some new facts, and gives an exposition of the neutral rights of the innocent, unoffending inhabitants of Cuba.

It is the case of the brig *Henry*, of Hartford, captured on the 24th of September last, off the Bay of Honda, when bound with a load of sixty-eight mules, from St. Jago, in Mexico, to Charleston, in South Carolina; the vessel, as soon as captured, was run into a small creek, alongside ten other hulks of vessels, having the appearance of being recently burned, and which must have been navigated by 180 or 150 men, not one of whom was visible, but the crew of the *Henry* was significantly given to understand, that their fate, as soon as the mules were landed, was to be a similar one, and that dead men told no tales. The *Henry* was then dismantled, to prevent her being seen, her equipment and stores taken out, put on board a Spanish drogher, belonging to Havana, and preparations made for landing the mules; the captain having been twice hung up by the neck to the yard-arm, until he was senseless, and became subsequently deranged, the arm of the mate broken by the stroke of a cutlass, and the crew outraged and abused. Happily, however, before the mules could be landed, the vessel was discovered by the boats of the English sloop-of-war *Icarus*, who humanely came to their assistance; and on their approach, the pirates quitted their prey, and abandoned it. Not so easily, however, did the neutral inhabitants of Cuba quit their hold; after a time they came off—plead their neutral rights—claimed the mules as their property—they had bought them of the pirates—they had paid a valuable consideration—they had an equitable interest in them, and demanded their delivery! The British commander indignantly took the best possible course he could have adopted, with a single exception; he instantly ordered all the mules to be shot upon the deck; the exception referred to, is, that he should have shot, in preference, those who demanded them. Mr. L. stated, he would not pursue this disgusting detail, but would leave it, after observing, that if, for a length of time, we permitted atrocities of this kind to continue and go unpunished, the multitudinous waves of the ocean would not speedily efface the crimson it would attach to our escutcheon.

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He had said, that, with the exception of the third section, now proposed to be stricken out, and the first, which contained no new principle, he considered the bill as of little value.

Mr. VAN BUREN said that the subject under consideration was justly considered by the gentlemen who had spoken before him, as one of the utmost importance, requiring the prompt, zealous, and efficient attention of the Government. It was one in which a great portion of his immediate constituents, from their situation and pursuits, had a deep interest, and thinking so, partook largely of the general solicitude which was everywhere felt in relation to the proceedings of Congress in the matter. That circumstance must be his apology for prolonging a discussion which had been conducted with so much ability. At the commencement of the session, this subject was referred to the Committee on Foreign Relations; they had given to it their early and zealous attention, and the bill on the table was the result of their deliberations. Although he might not be able to approve all its provisions, he was led, by inclination as well as duty, to give them a liberal and candid examination—to aid in their improvement, if that should be in his power, and support such as he could, consistent with obligations of an equally imperative character.

Although the immediate question before the Senate was to strike out the third section, authorizing, in certain cases, a blockade of the ports of the Spanish Islands in the West Indies, the discussion had embraced the whole subject. He thought this course justifiable, and would himself follow the example which had been set.

As early as the year 1822, piracies in the Gulf of Mexico and West India seas, had arrived at so great a height, and assumed a character so alarming, as to call for the most rigorous exertion of the Government for their suppression. The call was not made in vain. In December, 1822, a law was passed, "authorizing an additional naval force for the suppression of piracy;" making an ample appropriation for the object, and placing the means provided at the disposal of the Executive. Those means had been put in prompt and effectual requisition, under his direction. In February, 1823, a squadron, consisting of seventeen vessels, of different sizes, besides barges, was prepared for sea, and despatched upon the service authorized by the act, under the command of that most gallant and meritorious officer of the navy, Captain David Porter. The success which crowned the exertions of Capt. Porter, and the gallant men under his command, was fresh in the recollection of all. Although driven from the station by pestilence, in the latter part of the season, such had been the destruction, and such the impression made on the pirates, that Captain Porter, in his letter to the Secretary of the Navy, of Nov. 19, 1823, declared "that he had no knowledge of the existence of any piratical establishment, vessel, or boat, or a pirate afloat in the West Indies and Gulf of Mexico. That they had all been

burnt, taken, destroyed, and driven to the shore, where the latter had, in most cases, been speedily captured by the local military." And the Secretary of the Navy, in his report to the President, of the 1st of December, 1823, which accompanied his message to Congress, stated that "piracy, as a system, had been suppressed in the neighborhood of the island of Ouba, and now required only to be watched by a proper force, to be prevented from afflicting commerce any further in that quarter." Such were the results produced by the exertions made for the suppression of piracy in 1823. Let us now (said Mr. V. B.) direct our attention, for a few moments, to those of the past year. The Secretary of the Navy, in his communication of the 12th of January last, informs us, that all the vessels, making the squadron of 1823, (except four small schooners, two of which had been lost, and two abandoned, as unfit for service,) had been uniformly employed in the object, so far as their size, and the necessity of occasional returns into port for stores and repairs, would permit; that the effect produced had fallen far short of that of the preceding season, was most apparent. From the month of July down to the last accounts, the horrid practice had been gradually extending, and assuming new features of atrocity, until it had arrived at a height not only ruinous to our commerce in those seas, but, in an unprecedented degree, destructive of the lives of our citizens, and distressing to the cause of humanity.

To what cause, he asked, are we to attribute this unfortunate and distressing disparity in the results of the service of the two successive seasons? He put the question, not with a view to implicate any one, but to be informed, by those more capable, and who had better means of information: to the end that, if in the power of Congress, the appropriate remedy might be applied. He knew too well, and prized too highly, the gallantry, fortitude, and perseverance, of our naval officers and seamen, to believe, for a moment, that they could be deficient in any thing which duty required at their hands; and he did not feel himself at liberty, from all the information before us, to say that there had been dishonor or misconduct upon the part of those to whose control the force employed was intrusted. In the communications made to the Department of State by the commercial agents at the Havana, (Mr. Randall and Mr. Mountain,) and laid before the Senate in pursuance of their call, the explanation is attempted to be given. In their several letters, from July to late in November, they complain of the withdrawal of the squadron from that station. They put this matter strongly before the Government: they say, "that since the spring, the vessels have been dispersed on various services remote from the island; that they have merely made it a touching point, in transitu, without remaining long enough to make any permanent impression on the system." They do not question, but, on the contrary, highly applaud the

zeal, enterprise, and courage, of our officers and seamen actually engaged in pursuit of the pirates, but attribute the consequence to the diversion of the force to other and incompatible objects; of which, the chief one, they say, is the employment of the vessels, destined for the suppression of piracy, to the transportation of specie from ports in the Gulf of Mexico to the United States. They are very explicit on this subject, and as he (Mr. VAN BUREN) had already observed, expressed themselves very strongly. On the other hand, Commodore Porter repelled the complaints which had been made to the Government by merchants and others, with great force, attributing the revival of piracy to causes other than those spoken of by Randall and Mountain. It was not, Mr. VAN BUREN said, for the Senate to decide whether there was blame anywhere, or if there was, where it lay. The act of 1822 did not (as its title would seem to indicate) confine the appropriation exclusively to the suppression of piracy, but provides "for affording effectual protection to the citizens and commerce of the United States, in the Gulf of Mexico and the seas and territories adjacent." Under it, Commodore Porter had been charged by the Navy Department, in his first instructions, in addition to the suppression of piracy, not only to extend his attention to the suppression of the slave trade, to the system of privateering on our commerce, carried on from Porto Rico and Porto Cavello, but also to the protection of the convoy of specie from Vera Cruz and the Mexican coast generally to the United States. There was, Mr. V. B. said, no complaint from the Department, that any greater attention had been paid to the latter branch of duty than was warranted by its instructions.

But he thought there was reason to apprehend, that the main object, the suppression of piracy, had been seriously affected by the multiplication and variety, and supposed incompatibility of the duties he had spoken of. He advanced this suggestion, however, with diffidence. His inexperience in these matters might lead him into error—but if there was ground for the apprehension he entertained, he respectfully submitted whether measures ought not now to be taken to prevent a recurrence of the evil. Mr. VAN BUREN said he would not detain the Senate longer on that branch of the subject, but proceed to the consideration of the different sections of the bill. [He then adverted to the provisions of the bill authorizing the building of ten sloops of war, the privileges given and rights secured to merchant vessels who should arm for their own defence, and the authority to place on the pension list those seamen in the merchant service who should be wounded by the pirates, and the widows or children of the slain, explaining the grounds on which they rested, and his ideas of their propriety.] These, said Mr. V. B., are all the provisions recommended by the committee looking to attacks upon the pirates on the

ocean. They are appropriate, and, as far as such measures can go, will doubtless be found sufficient. But it is supposed that, in consequence of the changed condition of things on the island of Cuba, other measures, and of a different character, are called for.

In 1823, Commodore Porter ultimately received efficient aid from the local authorities of the island. It is now said, that that aid has been withheld during the last season, and that, instead thereof, there has been criminal confederacy with the pirates on the part of the great body of the inhabitants of the island, and a participation in their plunder—that, with the exception of the Captain General, and some of the higher officers, there has not only been a total remissness on the part of the local authorities in the use of means for the detection and destruction of the pirates; but that they have received countenance and protection from most of the officers of the Government. It is on the assumption of those positions, that the committee have recommended measures which are intended to bear upon the inhabitants themselves. That these measures, or others of the same tendency, may change the existing relations between Spain and our Government, is understood; and the consequent propriety of looking well to the facts on which they are predicated, has been duly appreciated. The Executive has been called upon for information. He has furnished it. Of the credibility of the sources from which it is derived, we cannot judge; but we are to presume it good—the ability of its author is apparent. The statements made by Mr. Randall, and by Mr. Mountain, are full of, to us, the most distressing, and to the people and local government of Cuba, discreditable, and even criminal facts. We are told, that there is not the least doubt, that many of the inhabitants are concerned in the equipment of the vessels employed by the pirates, and in the participation of their plunder—that the moment a prize to the pirates arrives on the coast, persons from the interior throng to the spot to share in or purchase the plunder; that the property soon finds its way into the cities, and tempts the cupidity of all by the advantage of the treasure; that large quantities of the plunder have been known to be introduced into Matanzas, and publicly sold, at prices which alone betray the nature of the property; that retailers of goods are seen travelling to the coast with pack-horses, for the known purposes of purchasing from the pirates; that this was carried to so great an extent, that a respectable Englishman, who owned a ferry near the city, informed Mr. Randall that the returns from his ferry gave certain indication when prizes were on the coast, from the number of persons who resort from Matanzas to their rendezvous; that persons, known to be pirates, walk the streets of that city unmolested, wearing upon their persons goods known to have been obtained by violence. One case, which is mentioned by

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Mr. Randall, will serve to illustrate in the most striking manner, the extent of this evil. A large sum of money in doubloons, which had been plundered from a Boston vessel, had been traced to the village of Regla. The Captain General was informed of the fact, and his aid asked for its recovery. Having caused inquiry to be made, he sent for the claimant, and informed him that he feared all Regla would be implicated in the robbery, and that, in the then disturbed and critical condition of the island, he dared not push the investigation further. And, to give countenance to the practices enumerated, we are told that men of responsibility on the island, openly justify the conduct of the pirates, making it a political question, and urging the commission of what they call similar practices of the Americans, in capturing Spanish property, under the South American flag. To redress those atrocious disorders, frequent and unavailing applications have been made to the local government. Circumstantial and well-authenticated accounts of them have been repeatedly laid before the Government of Spain by our Minister at that court, and the attention of the Spanish Government to the subject, solicited with much eloquence and great force. The appeal thereto has been made in vain; on the contrary, all the indications we can derive from the documents, of the disposition of the Spanish marine, are of a character evincing an indisposition to aid in the destruction of the pirates. A Spanish brig of war boarded a piratical vessel in the neighborhood of Cuba, received presents from, and exchanged civilities with her, and suffered her to pass, on being informed by the pirate that he cruised only against the enemies of Spain. In another case, a Spanish vessel of war was laying in Matanzas when the American brig *Industry*, from Baltimore, was attacked by pirates in the harbor, without interference on the part of the Spaniard, although the attack was well known at Matanzas at the time of it.

It is from these and other facts, established by the documents on our tables, said Mr. V. B., that the committee have drawn the strong inference of a participation in the guilt of the pirates on the part of the inhabitants of Cuba—remissness, if not encouragement, on the part of the local government, and a total disregard of our complaint on the part of Spain. In his judgment, the committee were well warranted in the opinion they had formed and expressed. The case was one which he thought called for the exercise of the best means at the disposal of the Government. That the extermination of those atrocious robbers was due to the character of the country, to the cause of humanity, and to the rights and injuries of our oppressed citizens, was a sentiment in which all concurred. We have, said he, the physical power to effect it—we have the moral power,—that is, the right to do it, and the duty of its accomplishment rests upon us. If they differed, it could only be as to the means to be employed,

and the manner of their application. On that subject he would submit his ideas with freedom, but with diffidence, and with an entire willingness to yield to the views of those who were better able to judge. The Executive, in his message, had suggested three expedients, in addition to the other and undisputed provisions of the bill, viz., “the pursuit of the offenders to the settled as well as unsettled part of the island, reprisals on the property of the inhabitants, and a blockade of the island from which the pirates issued.” The committee had adopted the first and last only.

Mr. V. B. said he complained of the provisions of the bill professing to give the right of pursuit, because it fell short of what it ought to be, and he was constrained, by obligations of the most imperative character, to oppose that which authorizes a blockade of the Spanish ports, as wholly unwarrantable. He would state the grounds on which his objection rested. The section confines the right to land and capture the pirates, to cases of *fresh pursuit*. That right existed to the full extent, by the law of nations, to which it was proposed to be given by the bill, except, perhaps, the alternative of bringing the pirates to this country for trial, if they were captured in the inhabited parts of the Spanish territory. That such, too, was the opinion of our Government, would be seen on a reference to the instructions given to Captain Porter by the former Secretary of the Navy.

But a slight consideration of the subject was necessary to show that that opinion was well founded. Although pirates are not regarded as enemies in the sense in which we speak of the public wars of belligerents and neutrals, still, the inferences which have been drawn by the former Secretary, by analogy to the rights of a belligerent to follow his enemy in certain cases, into a neutral port or country, are founded in reason and good sense. That a belligerent has a right so to follow his enemy, is certain, but in what case can he (without fault on the part of the neutral) alone exercise this right—it is in case of eager pursuit, on account of some conflict or violence which has preceded and which is followed up, whilst the matter is warm. Otherwise, he has no right to seek his enemy in the port or country of his friend. So, too, in regard to pirates, if a vessel is attacked by them, and in its defence, or if, knowing them to be such, and in a lawful attempt to arrest them, they fly anywhere, by land or water, you have a right to pursue them. If that pursuit was continued into the Thames, to the city of London, even to Westminster Hall itself, the act of the pursuer would not give just cause of complaint to the Government whose territory was so invaded. The motive and the object were laudable, and no offence or injury being intended, none would be considered as done. The truth and justice of this position, he said, might be illustrated by familiar allusion to the personal rights of individuals, and he made them. There is, there-

fore, no doubt, said Mr. V. B., that, if our vessels come in contact with the pirates at sea, and they fly, the right of pursuit to the land, settled or unsettled, attaches, and the bill upon the table gave no more. It was most evident that, unless Spain could be induced to interfere, or the mischief in some other form repressed, a further authority to our forces would become indispensable—the authority to land on the island in search of pirates, to exercise municipal authority there, to wrest the sword of justice from the hands of those who were unable or unwilling to wield it for the ends of justice. He would give the right to the President, to authorize the exercise of such powers, under the circumstances he would thereafter state.

Mr. VAN BUREN said that the views he had thus far taken of the subject, brought him to the consideration of the immediate question before the Senate, the motion made by the gentleman from Virginia to strike out the third section, which authorizes the blockade of the Spanish ports upon the establishment of certain facts. Mr. V. B. said he fully concurred with the honorable gentleman who had made the motion, in considering the measure the section contemplated as utterly unwarrantable by the law of nations, and (if that view of it could be entertained) wholly inexpedient. Mr. V. B. said that the two gentlemen of the committee who had preceded him, and the gentleman from Massachusetts, who had last addressed the Chair, Mr. LLOYD, had attempted to support the measure on various, but in Mr. VAN BUREN's opinion, untenable grounds. The gentleman last up had endeavored to do it in part on the score of the authority derived from the recommendation of the Executive, inferring from thence the opinion of his cabinet, composed, as it undoubtedly was, of men of learning and talents, in favor of the fitness of authorizing of blockades under the circumstances contemplated by the bill. The first we hear of the measure is from our agent at Havana; the next in the report of the Secretary of the Navy, accompanying the President's Message at the commencement of the session, as explained by the Secretary in his letter to the Chairman of our Naval Committee; and, lastly, in the suggestion of the President in his late message to the Senate.

Mr. VAN BUREN said that he had reason to doubt the correctness of the inference of the honorable gentleman; that he had accidentally been possessed of the knowledge, that at least one of the persons alluded to, and him whom the honorable gentleman possibly referred to as the one who had spent a great portion of his life in the study of Grotius, Puffendorff, and Vattel, and other writers on national law, was not of the opinion supposed. But, waiving further remark on that head, what, said Mr. V. B., is the right of blockade? It is, said he, one of the highest acts of sovereignty which the law of nations allows to a belligerent, and, however well established the right is, its exer-

cise is universally conceded to be most harsh and oppressive in its operation upon the rights of third parties of any that is contained in the code. By it a belligerent extends the hardships and sacrifices of war, from the parties concerned to their neutral friends, by interrupting their accustomed and otherwise lawful commerce. He does this when and where, on the coast of his enemy, he pleases, and to any extent his passions or supposed interests dictate, and his means can accomplish; all others must submit to it under heavy and well-defined penalties.

It is a right of war, and it is in time of war only that it is, or ever was allowed by the law of nations. No instance in which it was otherwise exercised, or the right to exercise it claimed, is to be found in the books. This is conceded. The recent blockade of Cadiz by the French, stands upon war ground. That matter has been demonstrated by the gentleman from Virginia, in the lucid argument he submitted the other day. War existed between France, as the ally of Spain, and that portion of Spain embraced by the blockade. If it did not, the blockade was a violation of the law of nations. Mr. V. B. said he was, moreover, indisposed, in any view of the subject, to refer to acts committed in a war waged for the destruction of the liberties of one nation for evidence of the rights of others. Are we, inquired Mr. VAN BUREN, at war with Spain? Certainly not. Is it the design of the committee that the passage of the bill and the exercise of this power, under it, is to put us in that condition? The gentlemen, say no. What then, he asked, are we about to do? To exercise, in a state of peace, a measure which is only allowable in a state of war. When it was admitted, said Mr. V. B., that the section contemplated a measure not authorized by the law of nations, he hoped that, in this country at least, no further argument could be necessary to dissuade from its adoption. Such, however, appeared not to be the case. We are told that the Governments whose trade will be affected by this blockade, will not complain, because it is necessary and proper to secure the suppression of piracy, and because the interests of all nations are thereby promoted.

But why is it that we consider proceedings against the inhabitants of Cuba proper? It is on the ground of their participation in the guilt of the pirates. Of that we judge from information, which we have; but which they may not have. We judge of it under the influence of feelings excited by accumulated injuries; they are not entirely so situated—what is satisfactory to us may not be so to them, and unless it be so, we have no reason to count on their acquiescence. If we had, still we would not stand justified in the eyes of the world, to attempt so flagrant an interpolation in the national code. If they do not acquiesce, then comes the question so emphatically asked by his honorable friend from Virginia, (Mr. TAZEWELL,) how will you enforce your blockade? For violations or

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attempted violations of a lawful blockade, the law of nations authorizes the blockading power to capture and confiscate the property of the neutral. This is on the principle that by the act the neutral takes part with the enemy in furnishing him with the means either of subsistence, escape, or information; and the measure of punishment for such interference, is what he had stated. Questions of prize, or no prize, are to be decided by the law of nations, subject to treaties. By that law it is conceded that condemnation for a violation of such a blockade as this would not be allowed. The right is not given by the act. Why not? Because there is no authority or precedent for it. Are not gentlemen, he asked, aware, that, by thus abandoning the means of enforcing a blockade, they admit, substantially, the illegality of the measure? But we are told, said Mr. V. B., by the honorable chairman, that he contemplates a resort to force, and to force only, to enforce the blockade. What will be the inevitable consequence? A French or English vessel, or the vessel of any other nation trading with Cuba, approaches a port you have blockaded—she is warned off—denying your authority, as she well may, she keeps on. You fire into her, slay her crew, and sink her vessels, and *war exists between you and the nation to which she belongs*. You thus put it in the power, said Mr. V. B., nay, you make it the duty of your officers on that station to involve you in embarrassments and war almost without limit.

Modifications of the measure have been spoken of to-day, so as to confine it to Spanish commerce. You cannot do it without involving yourselves in the assertion of another equally untenable right, the right of search, in time of peace, of vessels carrying on a lawful trade. In any point of view, therefore, the measure is ill-advised, and should no longer be persisted in. It is to be regretted that it has obtained so far—it may hereafter be brought in judgment against us. We have interests as well as character involved in the question. In the wars which have heretofore ravaged Europe, we have occupied a neutral station,—our situation, the tendency of our Government, and the temper of our people, will, it is to be hoped, continue us in the course we have hitherto so wisely and so happily pursued. The interests of the neutral, therefore, seem emphatically our interests, and we should be careful how we tamper with them. We know well that this right of blockade is cherished and valued by our great maritime rival, as the firmest charter of her naval pre-eminence—a right which she has always manifested a wish to enlarge, and which we, in conjunction with other nations interested in the freedom of the seas, have struggled to confine to its ancient limits. Mr. V. B. had said that we had character involved in this question; what we had said and done on this subject was before the world—our light had not been hid. We had, he said,

principle to maintain, which it had been our pride to support, and which we should be ashamed to abandon. Allusion had been made, and properly made, by the gentleman from Virginia, (Mr. T.,) to the collision which had existed in the question of blockade between England and this country at an early period; and he might, with equal propriety, have referred to others of a later date. We should be cautious how we exposed our conduct on occasions that are open to suspicion. Much of our greatness, and no small share of our strength, as had justly been observed, rested on our fidelity to principle, and continued reverence and support of the great doctrines of public law in our intercourse with the world. Mr. VAN BUREN said he would further illustrate his idea upon this subject by a reference to a point of controversy between us and Spain, connected with the very subject under consideration. With no other force than a single frigate, a brig and a schooner, employed in transporting supplies from Curacaoa to Porto Cabello, she had presumed to declare a blockade of more than twelve hundred miles of coast of the Republic of Colombia and the Government of Mexico, adding to the declaration the idle pretence that she had a right to interdict trade with those places, because the same had heretofore been forbidden by the Spanish colonial laws. On the strength of these principles, so entirely inadmissible, she had issued commissions at Porto Cabello and Porto Rico, to privateers, who had committed extensive depredations on our own commerce. We have inveighed loudly and justly against Spain for this outrage. We have said that the only difference between those privateers and the buccaneers of Cuba was, that the former acted under a commission to which the latter made no pretence. On what ground have we done so? It has been, because the idea of now enforcing the colonial laws of Spain was ridiculous, and that by the law of nations their blockade could only be legal as far as their actual force will make it effectual. Will the honorable chairman inform me with what force we can complain of Spain on this inroad of the law of nations, if we appropriate this solemn right of war to mere municipal purposes, with full knowledge that the pretence of a right so to use it is not to be found in that law; and that, in attempting it, we attempt a flagrant interpolation upon its principles? But he had done with this branch of the subject, and would conclude it by conjuring gentlemen to be cautious how they made innovations in the public law, and admonishing them that other nations might hereafter improve upon our decision in a form which might be the occasion of our lasting regret. Mr. V. B. said that he would now state, in a few words, what the provisions were which he would substitute, for those of the bill; they were:

1st. Power to the President to authorize our forces to land on the island of Cuba, in quest

of the pirates, and there exercise all the power necessary to their suppression, of which he had already spoken.

2d. Power to the President, on being satisfied of the facts stated in the section; or some other of a similar character, to authorize reprisals upon the commerce and property of the inhabitants of the island, or by way of contribution on the places, participating in the piratical acts upon our commerce, or both, or in such other form as those more acquainted with the matter should prescribe. He would give this power to the President now, because Congress must adjourn in a few days, not to meet again in nine months, and because, during that period, the exercise of such a power might become indispensable, and he would leave that question to the discretion of the Executive, by whom, he had no doubt, it would be wisely and safely exercised.

In that exercise, he had no doubt every thing belonging to the subject would be regarded, and in connection with that part of the subject he would take the liberty of suggesting what, in his humble opinion, might be done with profit and propriety, by the Executive, previous to the exercise of the strong power with which Congress would clothe him. There was, said Mr. VAN BUREN, not only something in the nature of the crime we seek to suppress, but in the place where our power is to be exercised, which not only authorize us to ask, but may perhaps be deemed sufficient to require, that we should ask the co-operation of some, at least, of the other powers of Europe. From the present condition of Spain, depressed as she has been by her foreign and domestic wars, and pressed almost to the earth by her late inglorious conflict with her own subjects, the question of her ability to maintain her power in the island of Cuba had for some years been entertained. It was now, he said, well known, that that circumstance, added to the extreme importance of the island to several of the powers of Europe, and particularly to this country, had given rise to much jealousy among those nations in regard to it. Rumors of cessions, and apprehension of cessions, had been frequently heard and entertained. Such was the jealousy of the inhabitants themselves upon the subject, that when Captain Porter last arrived, orders were understood to have been given, refusing the admission of his squadron into their ports, avowing, as the reason, their apprehension that his object was conquest. That was, however, explained by the present Captain-General, who knew, and was capable of appreciating our motives.

Is there not reason to apprehend that, if, without consultation with England and France, the measures necessary to the entire extinction of this abhorred race, (on the assumption that Spain will do nothing,) may excite jealousies on the part of the Governments to which he had alluded, that may lead to unpleasant embarrassments; and is there not, on the contrary,

every reason to hope that on application made to them, they would cordially concur in uniting their exertions with our own, in a cause in which their interest and ours are identified? In conjunction with them, the Spanish Government might be addressed in a manner which could not fail of its effect. She might be told that she owed it to the world to suppress this odious practice; that her delinquency was palpable—that, if she desired its suppression, and had not the means to effect it, she ought to say so, and to consent to the occupation of such parts of her islands as were necessary to that end. If she still refused, the necessary means might be used by the powers of which he had spoken, and a final end would be put to piracy. We have, said Mr. V. B., a right to count on their ready and zealous co-operation. But if, contrary to all expectations, they should refuse, then the Executive could exercise the additional powers with which you invest him. To make these explanations, some longer time might be required than to obtain the evidence necessary to authorize this blockade—but there would be time enough.

In the mean time, our forces in those seas would not be idle—they would act with all the means and authority they had in 1823—and if, after taking such steps, the Executive should authorize measures, which it is conceded might, and probably would, lead to a war with Spain—the nation would support, and all the world approve our course.

On motion of Mr. HAYNE,

The Senate then adjourned.

TUESDAY, February 1.

*Suppression of Piracy.*

The Senate again proceeded to the consideration of the bill for the suppression of piracy in the West Indies; the motion to strike out the third section, (which authorizes a blockade of the ports of Cuba, under certain circumstances,) being still pending.

Mr. HAYNE, of South Carolina, rose, and said, that, as he could not entirely concur in the views which had been taken of this subject by either of the gentlemen who had spoken, he would ask the indulgence of the Senate in stating the principles on which he was disposed to act in the suppression of piracy. When this question of *blockade* was first suggested, Mr. H. confessed that it had excited scruples in his mind, in respect to the principles which it seemed to involve, and these scruples had certainly not been diminished by the learned and ingenious arguments of the gentleman from Virginia, (Mr. TAZEWELL.) He was constrained to confess, that the magic wand of that gentleman's eloquence, by which he gave, at pleasure, any form or hue to the subjects which he touched, had exerted its influence on his mind and his feelings. A more deliberate examination of the subject, however, had dispelled the charm, and convinced him that the proposed



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measure involved no sacrifice of principle, and though, without certain modifications, (which Mr. H. said he would take the liberty of suggesting,) he could not bring his mind to vote for the clause, yet he should be influenced in his vote by considerations entirely different from those which had been urged. He had no scruples whatever on the subject of a blockade of the ports of Cuba, when the case should occur which should, in his opinion, make that measure indispensably necessary for the suppression of piracy. He would endeavor, as briefly as he could, to put the question on what appeared to him to be the true ground; the ground on which we may not only safely act now, but on which we might proceed in all our future measures on this subject. The question is one of such vast importance, involving, to so large an extent, the property and lives of our fellow-citizens, and touching so closely the honor of the country, that it could not command too much of the time and attention of the Senate, or receive too thorough an investigation. He should, after the example of the gentleman who had preceded him, consider the whole bill as open for discussion, and should therefore present his views of the several measures it proposes, and endeavor to show their relative importance in the accomplishment of the great object which we all have in view—the suppression of the atrocious crime of piracy. Mr. H. said he would begin with the question of blockade. The honorable gentleman from Virginia, (Mr. TAZEWELL,) who had moved to strike out that feature in the bill, had told us emphatically that it was a *measure of war*; while his colleague, the Chairman of the Committee of Foreign Relations, (Mr. BARBOUR,) insists that it is a *measure of peace*—peaceful in its character, as well as in its objects. The character of the measure seems to be the only point in issue, between the friends and opponents of the bill. But, sir, said Mr. H., I will submit that this is not the true question; the merits of the particular proposition cannot depend on the *name* by which it may be called. If the blockade of the ports of the island of Cuba be the only means of affording to the commerce of the United States that protection which it has a right to receive at your hands; if the monstrous and desolating crime of piracy cannot otherwise be effectually suppressed; then the measure becomes just and necessary, and must be resorted to whether it be a measure of peace or of war. The gentleman from Virginia seems to take it for granted that, when he proves that a blockade is a belligerent measure, he has proved enough, and that it follows, as a matter of course, that it is inexpedient and unjust; nay, that it will even impair the moral character of the Government and the people of the United States.

I am disposed, said Mr. H., freely to admit that, according to my view of the subject, a blockade is an act of war. But I feel myself, at the same time, compelled to dissent from the

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proposition, laid down with so much emphasis by the gentleman from Virginia, that “a blockade acts not upon the guilty, but only on the innocent.” If such was the fact, the right of blockade would never have been conceded to belligerents, nor would the high authorities to which the gentleman had appealed, the learned writers on the law of nations, (whom Mr. H. admitted to be worthy of the encomiums that had been bestowed upon them,) have given their sanction to a practice which did not act upon “the *guilty belligerents*,” but only on “*unoffending neutrals*.” It may be true, that a state of war acts efficaciously on your own citizens, by prohibiting all intercourse with the enemy, under the penalties of treason, and that a blockade of the ports of that enemy would add no higher sanction to the prohibition. But how is it with the power whose ports are blockaded? She carries on trade with all the rest of the world. The laws of war do not prohibit her intercourse with neutrals, except in articles contraband of war. But the moment you blockade her ports, you cut off the whole of her trade. Neutrals, it is true, must also be affected; but the effect upon them is altogether incidental, and consequential, and it is suffered only because the belligerent cannot otherwise destroy the trade of his enemy. Look at the practical operation of the blockade proposed by this bill! Is it true that it would have no effect upon Cuba, “the guilty party,” but only (in the language of the gentleman from Virginia,) “on the innocent and unoffending neutrals?” It is true that a blockade would, of necessity, cut off some of our trade with Cuba, as well as that of France, England, Russia, Holland, and the other nations of the earth. But, at the same time, you would deprive Cuba of her trade with all the world, and would therefore affect her to at least ten times the amount that you would affect any other power. The object of the blockade, then, is directly to affect Cuba, and it is no objection to the proposition, (provided the measure be in itself just and necessary,) that it must also operate against neutrals.

Taking blockade, then, to be an act of war, what is the true question which we are called upon to decide? It is, whether such a measure is called for by the circumstances of our present situation. But here it is objected that, if this blockade be an act of war, it must be preceded by a formal declaration of war against Spain, and be followed by general hostilities. But this does not appear to my mind, said Mr. H., to be absolutely necessary. And here I will suggest a distinction between an act of war and general hostilities. No one can doubt that, to march an army into an adjoining territory, to attack and capture a town, is an act of war. During the siege or investment you would claim and lawfully exercise all the rights of war, and yet such a capture might, under certain circumstances, be lawfully made, without a declaration of war. Suppose an armed force to issue from an adjacent territory, from Canada, for in-



stance, and to devastate our frontier and kill our people, taking refuge in a town or fortress on the other side of the line, and that the British Government, (as Spain has done on the present occasion,) refused to interfere—can any one doubt that we would cross over and capture the place? Now this would be an act of war, and yet it need not be accompanied by a declaration of war against Great Britain—nor would it necessarily be followed by a general war.

Every resort to force by a power that has authority to make war, is an act of war. Nay, the definition of war, by the writers on the laws of nations, is "the prosecution of a nation's right by force,"—by force, either partial or general; by force adequate to the object, and applied how, and when, and where, the circumstances of the particular case may require. When you make war, you may carry it on either by general or by partial operations; and the latter are always to be preferred where they can accomplish the object. All measures of forcible reprisals, all levies of contributions, are acts of force—indeed of war, or they must constitute acts of plunder; and yet they are seldom accompanied by a formal declaration of war.

Suppose, said Mr. H., on the occasion of the attack on the Chesapeake, (one of the deepest wounds the honor of this country had ever received,) the gallant officer to whose command was confided the disgraced ship—the ever-to-be-lamented—the incomparable *Decatur*, had been ordered, he would not say by the President, but by the sovereign authority of this nation, to wipe off the foul stain by bringing into our ports a British frigate, and he had happily executed those orders, would not that have been a war measure? and yet, who would have contended that we had become pirates, and had put ourselves out of the social relations of nations, by making a capture without a declaration of war?

With respect to declarations of war, Mr. H. said, he would consider it unfortunate for the cause of humanity, if the law of nations required that they should, in all cases, precede acts of hostility. The history of the last half century would show numerous instances of the redress of national wrongs by reprisals, and the partial exertion of force, without general hostilities. Our French war, as it is called, was an example of this. The practice of nations, also, for the same period, would show, that declarations of war were not considered as indispensable. Look at the practice of England in these respects. In 1748, she captured the *L'Alcide*, and the *Lys*, without any declaration of war. In 1664, she captured a Dutch fleet in the same way, and subsequently, off Cape May, took four Spanish frigates, under similar circumstances. But, said Mr. H., I will not fatigue the Senate by multiplying instances. Every nation of Europe had, in a majority of cases, made war without a declaration. Indeed, it was more

usual to resort to manifestoes after a war, than declarations beforehand; to resort to particular acts of war, than to general hostilities. The writers on the law of nations had, indeed, laid down the rule that a declaration ought to be first made; nay, that time and due notice should be given to the enemy. But these rules were seldom observed. Even Bynkershoek, one of the soundest writers on the laws of nations, had allowed, "that, after satisfaction had been demanded and refused, a declaration of war was not required by the law of nature or of nations."

I will only further notice, said Mr. H., the attack by Great Britain upon Copenhagen. Great Britain did not declare war against Denmark, but she sent a powerful fleet, which blockaded the harbor of Copenhagen, besieged the town, interrupted the access of neutrals, and finally captured the Danish fleet. Here was an act of war—here was force, siege, and capture, which did not even lead, in its consequences, to a general war. I know, said Mr. H., that this act on the part of the British Government, has been universally reprobated. But the odium which rests on the transaction has arisen from the belief that the British Government took advantage of the weakness of Denmark to spoil her of her fleet. If the grounds taken by the British Government, however, were founded in truth, will it be said that they would not justify an act of war? They alleged that Denmark had made terms with the enemy; that her fleet was destined for Bonaparte; and that a public declaration of war would only have hastened an event already determined on. Suppose these facts to be known to the British Government, and she would have been justified in seizing the Danish fleet.

But, said Mr. H., if this blockade be a war measure, and a declaration be necessary, he would submit to the gentleman whether the act of Congress which enjoins it, may not be considered as a declaration, sufficient to satisfy the most fastidious advocates of form. The gentleman from New York (Mr. VAN BUREN) had yielded the whole question, when he stated that he was willing, *without war*, to invade, and occupy a portion of the island of Cuba. He protests against a blockade of the Havana, because, should we attack a neutral vessel, forcing the blockade, "war would, thereby, exist between you and the nation to which she belongs;" but he would capture, and hold the Havana, without war. What then is to become of neutral trade to that port? Surely, if you have a right to besiege, and capture, you have a right to blockade. The greater power must include the less. Nor would such a blockade, as is here proposed, have any affinity to the *paper blockade*, of which we have so often complained. The proposal is for an *actual investment*, and such an investment Mr. H. would consider as attended by all the incidents of blockade. Mr. H. was much mistaken if Sir William Scott had not frequently held, that an

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actual investment, a blockade, *de facto*, was all that neutral nations had a right to look to; and, if he was not very much mistaken, that great judge had, in one case, the blockade of Monte Video, by Sir Home Popham, in 1807, refused to hear evidence of the illegality of the blockade, it being admitted that the place was actually invested by the public ships of Great Britain.

I consider this blockade, then, said Mr. H., as a measure of force: as putting us into a belligerent attitude, in relation to Spain, and as giving us belligerent rights, as far as we may think proper to exercise them. And now, sir, I will go a step farther, and contend that we have just cause of war against Spain; and, though this may be a war measure, yet there is nothing to restrain us from taking it but our own interests or convenience. The facts, as disclosed by the documents on our table, are, that the island of Ouba is occupied by pirates; that, from their secure asylums on shore, they issue forth, and attack the defenceless merchantman, murdering the crew, and converting the property to their own use; that these depredations are committed by men known to the Spanish authorities in Ouba, and suffered with impunity to live in their cities, and openly to sell their plunder. I will advert, for a moment, said Mr. HAYNE, to a few facts, to show the extent of this practice, and the protection afforded to the pirates by the officers of Spain. The documents on our table show, that, from July to October, a period of less than four months, there were no less than *twenty-three* vessels captured, and plundered by the pirates—manned, by not less, certainly, than *two hundred seamen*, of whom scarcely one escaped to tell the tale. When the gallant Captain Graham, of the British sloop-of-war *Icarus*, rescued from the hands of the pirates the *Henry*, of Hartford, he found twelve merchant vessels in their possession, the crews of which were nowhere to be found. When the pirates were asked what had become of them, we are told that “they shrugged up their shoulders, and were silent.” These merchant vessels, says Captain Graham, must have been navigated by at least one hundred and twenty men—and it is obvious *they had all been murdered*. Mr. H. would not attempt to describe the horrors which must have attended the scenes transacted by those fell murderers on the bloody decks of our defenceless merchant vessels. Among the garments, pierced through with holes and stained with blood, were some which had belonged to innocent and defenceless females. Language was inadequate to depict the condition of those who were exposed to the mercy of these fiends in human shape, whose usual practice it was, first to torture, and then to slay their victims, in the solitude of night, when there was no ear to hear their cries, no heart to pity, and no arm to save them. “It is painful (says Mr. Randall) to reflect on the numbers who may have fallen victims to the same fate,

but whose tragical stories are buried in the ocean with their mangled bodies.” Now, sir, said Mr. HAYNE, it is proved that not only the inhabitants of Ouba, but the authorities, wink at these acts—nay, they share the plunder; and the Captain-General himself, when a case was brought before him of plundered property deposited in Regla, inquired just so far as to ascertain *the truth of the charge*, and then declared “that, as he feared all Regla would be found to be implicated in the robbery, in the present disturbed and critical condition of the island, he dared not push the investigation further,” or, in more plain terms, “I will not, because I dare not, grant you redress.”

But it may be said, that the Captain-General of Ouba is not the sovereign of Spain, and that our redress is to be sought for from the King. Well, sir, we have appealed unto Caesar. We have represented these matters to him in language as strong as is at all consistent with the rules of diplomacy, and a becoming self-respect. We have made these representations over and over again, and to this very hour he has never even condescended to give us an answer of any sort. By referring to the correspondence of Mr. Nelson, our Minister to Spain, it will appear that, on the 10th of January, of the last year, he made a strong and formal remonstrance to the Spanish Government on this subject, setting forth, in detail, the depredations committed on our commerce by pirates, who found refuge in Ouba, and other Spanish islands in the West Indies, detailing the nature of their proceedings, and the protection afforded to them by the subjects and officers of Spain. No notice was taken of this remonstrance. It was renewed on the 28d of January, and on the 8d of February, but the Spanish Government remained as cold and silent as the grave. On the 7th of September, Mr. Nelson, for the last time, brought the subject to the view of the Spanish Government. Language is incapable of making a stronger appeal. He states our grievances; tells the King “that the patience of the American Government had been tried to the fullest extent of sufferance, and that the time is at hand when we must resort to measures of a more efficient character.” This representation has also been treated with the most sovereign contempt. By this conduct, the King of Spain has refused us redress; he has adopted the acts of his officers, and made himself responsible for the injuries of which we complain. The Romans, from whom we have borrowed so many of our principles, civil and political, had a custom on this subject, worthy of much commendation. By their Feclal law, the *Pater Patratus*, or Chief of the Heralds, was sent to demand satisfaction for injuries, and if, in *thirty-three days*, no answer was returned, the Gods were called to be witnesses of the wrong, and war was forthwith declared.

Now, I do contend, that the conduct I have detailed gives us justifiable cause of war. But we are gravely told, that all this arises from the

weakness of Spain, and that this cannot furnish just cause of war. What! shall the subjects of Spain be suffered to depredate on our property, and murder our people, and shall we be told that we must submit to this because Spain is weak? Sir, Spain either can prevent these outrages, and wants the inclination to do so, or she is unable to prevent them. In either case, our right to protect ourselves is complete.

But, said Mr. H., though I contend that there is just cause of war against Spain—war, in any shape, which may suit our convenience to wage; yet, I admit that there is still another weighty consideration, viz: Is it indispensably necessary?

A nation which has just cause of war, is not bound to go to war. That is always a question of prudence for the nation itself. Now, sir, though I am convinced of the right of this Government to go to war, I am of opinion that the object which we have in view, to wit, the suppression of piracy, may be attained at less expense; and, therefore, that it is our duty to ourselves to postpone a measure which should never be resorted to, but under the last necessity. A blockade of Cuba must destroy, not only our own trade with that island, but it must destroy the trade of all neutral nations, and these would be evils of great magnitude. Should the honor of our country, and the protection of the property and lives of our fellow-citizens require this sacrifice, why, then, sir, let it be made. God forbid that we should consent to weigh profit against honor, or that the glory of our flag, or the lives of our citizens, should be thrown into the same scale with pounds, shillings, and pence. But this trade is too important to be lightly jeopardized. It appears, from documents submitted to this House at the last session, that the amount of our annual import from Cuba is near *eight millions* of dollars: that our exports amount to near *six millions*: making, together, a trade of *thirteen millions* of dollars, employing upwards of one hundred and seventeen thousand tons of American shipping, and between four and five thousand seamen.

This trade, too, consists in the exchange of articles which we can best spare, chiefly our *bread stuffs and lumber*, for those which are most essential to the comfort of our people. The interruption of it would be most severely felt by the poor, who would be deprived of the little luxuries which spread cheerfulness around their firesides. The trade of Great Britain and France, of Holland, Sweden, and Russia, with these islands, is equally important, and entitled to great consideration. Now, said Mr. HAYNE, my opinion is, that piracy may be suppressed without resorting to a blockade, so injurious in its consequences to the commerce of the world. I agree that *piracy must be suppressed*. I acknowledge that the conduct of Spain gives her no claim for forbearance on our part. I have no scruple to a war measure, and of calling it so in plain terms, if it be necessary. But I do

not believe that necessity now exists, and at all events, I am disposed to make a fair experiment, on the subject. I am, said Mr. H., a lover of peace. I believe it to be the interest of the United States to remain at peace with all the world. A few years will pay all our debts, and double our resources and our strength. I would therefore avoid war, on our own account, as long as it can possibly be avoided with honor.

Now, I think it can be proved, from known facts, as well as the documents before us, that piracy in the West Indies can be suppressed by the vigorous, energetic, and unceasing efforts of a competent naval force, having authority to land and to pursue the pirates into the settled as well as the unsettled parts of the country. It will be recollected, said Mr. H., that, at the last session of Congress, the report of Com. Porter was submitted to us, in which he stated, in substance, that piracy had been suppressed—"their boats burned and destroyed, and the pirates killed or driven ashore."

The Secretary of the Navy was so fully convinced that piracy was suppressed, that he stated it was only necessary in future "*to watch them*." The facts supported this opinion: piracy was suppressed, though the pirates had not been rooted out. This state of things continued up to the beginning of last summer, when it appears, from the documents before us, that Commodore Porter, being fully convinced that piracy was suppressed, returned home, and the fleet was detached on various duties, leaving a few small schooners, which could not remain long at sea, to watch the shores of Cuba. I beg, sir, that I may not be misunderstood; I do not mean to cast any censure on any officer of the Government, much less to pluck a single leaf from the wreath which encircles the brow of the gallant Porter. Sir, the country owes him a debt of gratitude for the addition he has made to our naval wealth, which I shall never forget. But I am constrained to state my conviction, that an erroneous opinion of the complete suppression of piracy; an opinion not confined to Commodore Porter, but pervading all classes of the community, by occasioning the diversion of the force, led to "the revival" of the practice. When the United States schooner Jackall arrived in Norfolk, early in the summer, she reported, that "for three months no act of piracy had been heard of;" and so confident were our officers that we should hear no more of piracy, that when Lieut. Skinner's account reached the United States, an article was published in a paper in this city, in the nature of censure on that officer, for creating a false alarm; stating "that there was not the least doubt that the accounts of piracies were exaggerated." It has been shown, sir, that all the cases disclosed in the reports of Messrs. Randall and Mountain, took place after the withdrawal of the force from Cuba. In Mr. Randall's letter of the 1st July, he tells us "that there were pirates lying off

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Matanzas, but there was no vessel of war of the United States there."

On the 5th July, he writes, "that the absence of our cruisers had emboldened these men to renew their piracies." On the 14th July he writes, "that the Grampus had arrived off the Havana, on the 7th, from the coast of Mexico, bound to New York." On the 12th, the John Adams arrived, to sail this day, (14th,) or to-morrow, from the bay of Mexico, bound to Philadelphia. In short, Mr. President, these occasional stoppages, in the course of other voyages, "like angel visits, short, and far between," afforded the only protection which our commerce received, if we are to rely on the documents on our table. The pirates, said Mr. Randall, boasted "that they had nothing to fear." I beg leave, said Mr. H., to read one or two passages from the letters of Mr. Randall and Mr. Mountain, which seem to set this matter in a very strong light.

Mr. Randall, in his letter of the 6th of September, says—

"It is also, in my opinion, necessary, that the force employed should be always present, with an undivided view and attention to this business. Their occasional absence on other duties, materially impairs their efficacy. Their operations against the pirates should be consecutive and unremitting. It has been found that occasional visits to suspected places, by different vessels, and at long intervals, produce no serious impression on the pirates.

"I cannot but lament, however, the causes (sufficient, no doubt) which have induced the withdrawing of so large a portion of the force. Recent events here have proved, that, if this was induced by the supposition that piracy was effectually put down, or that the force left was adequate to restrain it, the opinion was erroneous, and its consequences deplorable."

And again, in his letter of the 31st October, Mr. Randall says—

"It is here a matter of common observation and complaint, that the anti-piratical squadron has effected nothing against the pirates, commensurate with its numbers and force, during the last six months. This has not been owing to the want of zeal, of enterprise, or courage, on the part of our officers and seamen actually engaged in this pursuit, but to their diversion to other objects, incompatible with the efficient performance of this highly important service. Since the spring, the vessels have been dispersed on various services remote from this island, which they have merely made a touching point "in transitu," without remaining long enough to make any permanent impression on the system. For a considerable time the most exposed part of this coast, at the most dangerous season, was not visited by a single vessel of war, and, for a still longer time, by none but the smallest and most inefficient."

"The temporary cessation of piracies some time before, caused by the presence of a large force on the coast, seems to have induced a delusive and fatal opinion that the evil was extinguished, and to have led to the diversion of too large a portion of the force, to objects of infinitely less pecuniary, and of scarcely any national importance."

Mr. Mountain, the American consul, holds the same language: "It is too true," says he, "that our commerce has not been protected on this side of Cuba, since early last spring. Our men-of-war have occasionally been here, and off here, on their way to and from the ports of Mexico," &c. Now, sir, said Mr. H., is it not fair to conclude that, if piracy ceased to exist while the force was kept constantly on the coast, and if it broke out as soon as their presence was withdrawn, that an investment of the island of Cuba by a still larger force, kept constantly employed in that service, with a vessel anchored in the harbor of Havana, and another at Matanzas, will suppress the practice entirely? The sloop-of-war will be much more efficient than the worthless schooners now employed on that service, not only on account of being able to remain longer at sea, but because they can carry a number of barges, for service near the shore. Let, then, said Mr. H., the experiment be fairly tried, and if it fail, it will be time enough to blockade or seize the city of Havana.

The right to follow the pirates on shore, Mr. H. also considered as a material means for the accomplishment of the object. He could not concur with the gentleman from New York, (Mr. VAN BUREN,) that we had a right to pursue and take a felon, even in the Halls of Westminster. Where a Government exists, you must apply to the Magistrate, and nations were not in the habit of surrendering even a criminal—they were proud of being considered as a sanctuary, from which even a criminal could not be torn. Nor had the Secretary of the Navy given the power to the extent proposed by this bill. He had restricted the right of fresh pursuit to the parts of the country "where the local government was not felt." Mr. H. thought it should be extended further, and that it would be a very efficient measure. He hoped it would not be stricken from the bill.

As to arming of merchantmen, Mr. H. considered this also a measure entitled to support. He hoped to see the clause amended by the adoption of the motion of the gentleman from Maryland, extending the aid of the Government to the merchants, and then the measure would be an efficient one, both morally and physically. Mr. H. firmly believed, that these measures, rigorously executed, would suppress piracy, and afford complete protection to our commerce. If he thought otherwise, he would not hesitate a moment in voting for a blockade, or an invasion, or any other act of war, which might be necessary. But he was asked, "what if he was mistaken in that opinion, would he leave our commerce without protection, until the next session of Congress?" To this he would reply, that, if the gentleman would modify this blockade in the following particulars, he would now give it his vote.

1st. That the authority to resort to it should depend on the failure of the other means provided by this act.

2d. That it be, in that case, made applicable, not merely to cases of fresh pursuit, but be a measure of reprisal on the inhabitants of Cuba.

3d. That the measure be taken in concert with other powers, or after a communication with them.

Mr. H. would, even now, move such an amendment, if he did not believe that the Senate was altogether opposed to a blockade in any shape. Should he be mistaken in that opinion, and the Senate should refuse to strike out the clause, he would then submit an amendment. Mr. H. concluded by saying, that, on the whole, he had no doubt of our right to resort to any species of force, a blockade, or to any other *act of war*, against Cuba. But believing that measures of a milder character might accomplish the object, he was not, at this time, disposed to resort to so strong a measure, unless its exertion were made to depend on the entire failure of all other means.

Mr. VAN BUREN was too sensible of the indulgence he had received from the Senate yesterday, to trespass longer on their time than would be required to notice one or two of the points touched on by the gentleman from South Carolina. That gentleman had done no more than justice to the enormities practised on our fellow-citizens; the documents on our tables were replete with evidence of the most horrid atrocities; but it did not follow that we had a right to resort to any and every measure of redress which might be in our power, whatever might be their effect on the rights of others. However grievous our wrongs, we still owed it not only to ourselves, but to those nations with whom we are at peace, and against whom we have no cause of complaint, to resort to such remedies only as were lawful in us, and not injurious to them. The gentleman from South Carolina had labored to show that a declaration of war was not a necessary preliminary measure to the commencement of hostilities between nations. Mr. V. B. said, there was no doubt that in that the gentleman was correct; whatever might once have been thought upon the subject, the law and the practice had for a long time been different. War might be commenced by acts of aggression. But those acts should be of an appropriate character, such as reprisals, &c., or any act of force against the party *by whom we had been injured*. Was a blockade of their ports, in the first instance, an act of that character? This, said Mr. V. B., was the question, and the only question before the Senate. He contended that it was not, and that for the plainest of all reasons, because it operated, in the first instance, against our friends, against powers who were not only willing, but one of whom had efficiently and zealously co-operated with us in measures for the suppression of piracy. Against the commerce of those nations we were about to exercise acts of unwarranted violence—acts which could not but lead to the most injurious consequences. But it had been said, that, admitting that, by

the law of nations, the right of blockade can only be exercised in time of war, this act itself would place us at war with Spain, and thus render the blockade lawful. Mr. V. B. said, that this argument, however imposing it might, on a first impression, appear, was liable to great and unanswerable objections: first, it was in the face of the declaration of the committee, and professions of the Government, both of which disclaimed the idea of attaching such a consequence to the measure they proposed: secondly, although Spain might consider it as the commencement of hostilities, she might not—she might consult her true interests, and do us the justice to give us credit for proper motives; if she did, our unwarrantable invasion of the rights of other nations would stand without apology: and even if she did not, and war ensued, we will have anticipated its rights at the expense of our respect for the public law, and for the feelings of friendly powers; either of which would, he thought, be unworthy of the American people.

Mr. MACON said there was something in this business which he could not understand. Insurance from New York to New Orleans, the Senate was informed, was but one to one and a half per cent. How insurance could be so low, while so many piracies were committed, was more than he could comprehend. During the wars between France and England, when a great many captures were made, insurance was not so low as five per cent. Mr. M. then said, he thought that no necessity could justify a breach of the public law. We had endeavored, and successfully, to preserve that law, and he knew but one instance of its violation—that one he always thought very doubtful. We had constantly maintained, to the broadest extent, neutral rights with every nation with whom we had come in contact. This blockade, to say the least of it, was of doubtful character, and he therefore did not like it. It had struck him as a curious question, what would be the condition of a French or English vessel, if taken breaking this blockade; would she be a prize, or what? He was not willing to consent to any act which would jeopardize the character of the country. National character was like individual character—it ought never to be doubted—it ought ever to be so pure as to command respect.

It was to his mind as clear as the light of day, that the President had the power of suppressing piracy. Mr. Randall had proved, that, as long as vessels of war were there, no piracies had occurred, and he was afraid that carrying money had produced all these evils. As long as the vessels of war were there, the pirates were invisible; but, as soon as they were gone, they came out. This following the pirates on shore, was a much more difficult matter than gentlemen had represented it to be. How were the pirates to be known when they got on shore? They might change their clothes, or any thing else. The true way was to catch them on the water, by sending a sufficient force to Cuba, and

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to hang all that were caught; and when they found that catching and hanging were the same thing, there would soon be an end to piracy.

Mr. M. then asked, why would gentlemen wish to go farther than was necessary? What could be better than possessing the power of doing all they wanted? It seemed to him to be a race which should go farthest in his particular way. What more was necessary than to order the vessels to be taken and the men to be hanged?

On the subject of arming merchantmen, Mr. M. did not think the comparison of the assassin a just one; in individual encounters the consequences fall on themselves alone; but here, the consequences would be much more serious, if the power were abused. He did not suppose that merchantmen, generally, would seek to abuse it, but they were not better than any other class of men, nor did he believe them worse.

As to the effect these measures would produce on Spain, they were not worth thinking of. He considered Spain out of the question. What was Spain? No human being could tell—there were people there, and a sort of Government—but the French were there to keep their own people down. With respect to the people of Cuba, Mr. M. said he knew little or nothing. He always had understood that the trade to that island was a most profitable one to the United States. It appeared quite impossible to him that such a state of society could subsist as was described in Cuba; he should hope to find there as many pure as would have saved Sodom and Gomorrah.

Mr. M. said, if he were to liken this blockade to any thing, it would be to the attack on Copenhagen, by the British. Britain was afraid of the naval power of her rival and enemy, and said as Rome did, Carthage must be put down! It was ludicrous to talk of arming a whole nation against 400 or 500 bandits, after the late contest with the British. He saw no necessity for arming the merchantmen. If the navy could not protect the merchantmen, particularly in the American seas, we ought to have neither navy nor merchantmen.

He recollected Preble had put an end to the Tripolitan war, and Decatur soon ended the Algerine war. Both of these people were pirates by trade, by education, and, he had almost said, by religion. Our vessels went there at once: and cannot our vessels catch these Cuba bandits, without our attempting to make an interpolation in the law of nations? It was, he thought, a most difficult thing to alter public law. During the American war, all the powers of Europe assembled to do it—Great Britain withstood it, and the public law is now as Great Britain then said it should be.

It appeared to him, from Mr. Randall's report, that nothing but ships were wanting. He had no opinion of stuffing an administration. If they obtained what they wanted, they ought to be held responsible for the success of the means

employed. They did not want either armed merchant vessels, or a blockade. Of the latter, the President speaks with great delicacy; and from the former, the Secretary of the Navy thinks mischief may arise. Therefore, he thought it would be wise to give the administration what they wanted, but no more; and that he was willing to do now. He did not wish to make any profession of his wish to see the robbers exterminated, for we were to be judged, not by our words, but by our deeds. There was not a civilized man in the world but would wish it; and he could not call that inhabitant of Cuba a civilized man, that encouraged piracy. They waged war against the whole human race; a war of the most disastrous kind. They could be governed by no rule towards them but that of extermination: and as they could be repressed most efficiently without either blockading them, or arming the merchantmen, he was opposed to both measures.

The question was then taken on striking out the third section, and decided in the affirmative, by yeas and nays, as follows:

YEAS.—Messrs. Barton, Bell, Benton, Boulogny, Branch, Brown, Chandler, Clayton, Cobb, D'Wolf, Dickerson, Edwards, Elliott, Findlay, Gaillard, Holmes of Maine, King of Ala., King of N. Y., Knight, Lanman, Lloyd of Md., Lowrie, Melville, McLean, Macon, Palmer, Parrott, Ruggles, Seymour, Smith, Talbot, Taylor, Tazewell, Thomas, Van Buren, Van Dyke, Williams—37.

NAYS.—Messrs. Barbour, Eaton, Hayne, Holmes of Miss., Jackson, Johnson of Ken., Johnston of Lou., Kelly, Lloyd of Mass., Mills—10.

The Senate adjourned.

WEDNESDAY, February 2.

*Suppression of Piracy.*

The Senate again took up the bill "for the Suppression of Piracy." The following motion, made yesterday, by Mr. VAN BUREN, being still pending, viz:

*Resolved*, That the bill "For the Suppression of Piracy in the West Indies," be recommitted to the Committee on Foreign Relations, with instructions to report amendments thereto, giving power to the President, on its being satisfactorily proved to him that any of the pirates mentioned in the said act, find refuge in any of the cities or ports of the said island of Cuba, or other islands mentioned in the said bill, and that the local Governments of the said islands, on being requested so to do, neglect or refuse to aid in the apprehension, prosecution, and conviction of such pirates, to give authority to the crews of the armed vessels of the United States, under such instructions as may be given them, to land on the said islands, in search of pirates, and there to subdue, vanquish, and capture them, and bring them to the United States for trial and adjudication, as the said instructions of the President of the United States may prescribe: and further, to authorize reprisals on the commerce and property of the inhabitants of the said islands.

Mr. BARBOUR made a few remarks against the principle proposed in the instructions, and also

against recommitting the bill to the Committee on Foreign Relations.

Mr. VAN BUREN replied to Mr. B., and had no disposition to burden the committee with a duty which was not acceptable. As there were many propositions before the Senate for amending the bill, he wished it recommitting for the purpose of receiving such shape as would be generally agreeable to the Senate; but he would waive his motion until the sense of the Senate had been expressed on those amendments; and he accordingly, for the present, withdrew it.

The question then recurred on the following section, which Mr. HOLMES, of Maine, yesterday offered, viz :

"SEC. 3. *And be it further enacted*, That no public armed vessel of the United States, authorized and employed for the suppression of piracy, shall be engaged or employed in the transportation of specie, or any other article of freight, unless specially designated therefor by the President of the United States."

Mr. COBB, of Georgia, moved to strike out the words "unless specially designated therefor by the President of the United States."

Mr. COBB said he thought, from the documents which had been communicated by the Executive, it was sufficiently evident that this business of the transportation of specie in public armed vessels of the United States, must be a source of great emolument to those engaged in it. The officers of our naval force being like other men, would be unwilling to relinquish so profitable a trade, and it was a strong impression on his mind, that, so long as the practice continued, piracy never would be suppressed. If piracy were suppressed, there would be no further occasion for their being employed, but, so long as it continued, this system of jobbing would be pursued. Every temptation ought to be removed that would induce them to lax in the discharge of their duties. Let them be employed in the suppression of piracy alone.

Mr. HOLMES, of Maine, said, he understood it had been the practice for the President of the United States to designate the vessels which should be employed in this service of the transportation of specie—but there was nothing prohibitory, in the law and regulations, against other vessels doing the same. The consequence had been, that some part of the squadron had been employed in the transportation of specie. He should be unwilling to prevent the Executive designating, if he should see fit, the vessels which should be employed in the transportation of specie; but, at the same time, to say that other public armed vessels, not so designated, should not be so employed, would be to strike at the root of the evil. He thought piracy would have been suppressed by this time, had it not been for the cupidity of our naval officers.

Mr. LLOYD, of Massachusetts, said, that, in the documents on the table, there was but one allegation, and that by an individual, to prove that the public vessels had quitted their station, to transport specie, and had thus left the com-

merce unprotected. He doubted the existence of this fact to any great extent, and certainly the Senate ought not to legislate on it without having the fullest and most authentic information as to the extent of the practice. They ought, in his opinion, to apply for information to that Department which knew what had been done. There was a regulation by which every officer was obliged to report, on his return home, what he had received; therefore, if the Senate called for information, there was no doubt of its being furnished. Mr. L. said he would suppose that an insurrection should break out in a town where our vessels were stationed—Havana for instance—what would be the consequence? Our merchants had large sums of money there, and had no vessels to carry it away; it would be lost, because the public vessels would be forbidden, by law, to carry it away. Mr. L. said he was willing to agree with the gentleman from Maine, as to prohibiting the transportation of specie, excepting with instructions from the President or head of the Navy Department, but he hoped that his amendment would not go farther.

Mr. COBB said that the gentleman from Massachusetts seemed to doubt the authenticity of the statement which had been made; but his (Mr. C.'s) reasons for not doubting it was this: those documents had been presented to the Senate by the Navy Department, and if that Department had not believed in their authenticity they would never have communicated them. What has thus been laid before us, said Mr. C., is a convincing reason why piracy has not been suppressed, and it is the particular reason of my making the motion. The trade of transporting specie must afford great profit to the naval officers who are engaged in it. This temptation is such as to draw their attention from subjects of infinitely greater importance, and unless it is removed they never will perform their duty.

Mr. MILLS, of Massachusetts, thought that the amendment would operate to a greater extent than was anticipated. All public armed vessels were authorized to suppress pirates wherever they met with them. The amendment would go to prohibit the transportation of specie in public armed vessels altogether. Piracy did not exist in the West Indies alone. By act of Congress, the slave trade was piracy, and slave dealers were pirates; therefore, a vessel on the coast of Africa would be prohibited transporting specie as well as a vessel in the West India seas. The modification suggested by his colleague, (Mr. LLOYD,) would have been more proper than this; for that would have prohibited at once all armed vessels transporting specie.

The question was then taken on Mr. COBB's amendment, and lost.

Mr. CHANDLER moved to amend the section so as to prohibit all public armed vessels whatever from transporting specie, except such as should be specially designated by the President of the United States for the purpose; and he said that he was well satisfied that this traffic

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prevented piracy from being suppressed. The gentlemen of the Navy would, no doubt, like to make a little profit when they could do it legally, and on some stations the practice was very lucrative. Sometimes one commanding officer would have the benefit, sometimes another. Some would make more, and some nothing at all, which produced a soreness amongst the gentlemen of the Navy, while it seemed to divert their attention from the real and important object in view; and as long as this practice continued, the service must suffer by it. It should, therefore, be prohibited, except where the President thought it necessary to point out certain vessels to perform that duty.

Mr. HOWARD, of Maine, said he always thought it was necessary to confine legislation to the subject matter before them—they were now providing for the suppression of piracy, and he hoped they would confine themselves to that subject. If they wished to enact a general law for the regulation of the Navy, they ought to do so. It was a misfortune, he said, that there was not a naval peace establishment adopted, and he thought it was time there was one; but it could not be provided for in a bill intended for a different purpose. The want of such a law had produced all the evils complained of, and many more; and one principle which ought to be in such a law, was that which his colleague had suggested. They had not yet been able to pass a general bill, or to do any thing more for the regulation of the Navy than regarded the pay of the sailors; and the pay of the officers was provided for only by restrictions in the appropriation bill. He regretted these things were not more specially provided for, but it was not regular to attempt it in a bill of this sort. If the Legislature confined themselves to the object before them, he thought they could not miss it. With regard to his own amendment, he thought it was a proper one. Some were of opinion he had gone too far, but others thought he had not gone far enough. He agreed with the gentleman from Massachusetts, that the President ought to have the power of designating the vessels which should be employed, but he could not make the amendment he suggested.

Mr. LLOYD, of Maryland, said, that last session the Senate had passed a bill regulating the transportation of specie, and sent it to the other House, but it was not acted on. They had also passed a bill authorizing the building of ten sloops of war, but it had not been acted on. Were they to be told that these sloops of war were necessary for the suppression of piracy, or that they were intended exclusively for that object? No; they were necessary for our service, and he believed it was enough to authorize a law to build them, no matter whether they were connected with the piratical or any other question. He was very anxious to suppress this transportation of specie in public armed vessels. It was necessary, as far as regarded the moral and physical force of the Navy, that it should be prohibited, not only in the Gulf of

Mexico, but in every part of the world. We were now beginning to feel the ill effects of this system; the squadron sent to the Gulf of Mexico was useless from this cause. In the South sea this traffic, for such he must call it, was carried on to a greater extent than in any other part, and it would have the same effect in every part of the world—that of impairing the moral and physical force of the Navy. He did not perceive any thing incongruous in making this general provision in the bill for the suppression of piracy; it was as much connected with it as the bill for building ten sloops of war. He believed our naval officers to be the bravest and best on the face of the globe, but, if we placed temptations in their way, which it was not in the power of human nature to resist, we lessened their moral elevation, and lowered that chivalrous character which they ought always to preserve. He did not suspect them of sacrificing their duty, but it was necessary to guard them from all those temptations which might induce them to do so. The moment a soldier or officer lost that high principle which ought to characterize a military man, and became a trader in gold and silver, that moment his moral force was destroyed. What danger could result to the interest of this country from regulating the transportation of specie? They would not allow the President to point out where it should be carried. Did they doubt that he would ever refuse to transport the specie of the citizens of America? If they did doubt it, they must suppose he was unmindful of the interest of those citizens. It might be necessary, and in many instances be proper, to transport specie in armed vessels, but let this specie belong to the citizens of America, and not that belonging to foreign powers. If this provision were made, it would redound to the benefit of the commerce of the country, and the good of the Navy; and as they could not get this provision in a direct bill, they would be satisfied to procure it otherwise.

Mr. LLOYD, of Massachusetts, said, the current was running very strong against the transportation of specie in public vessels; but he believed it to be a very useful thing. It was not at all a novel principle, but had been acted upon by Great Britain for ages. She expressly authorized her naval officers to do it. If abuses crept into this system, why were they not remedied? why put this sweeping restriction on it? He believed it was a thing which might be easily regulated. If the President were required to designate the vessels which were to perform this duty, how could he possibly do it? how could he foresee what occurrences might take place, or what changes or emergencies happen in the West Indies or elsewhere? Mr. L. observed there had been a sweeping denunciation pronounced against the whole of the naval officers employed in the West India service. Would the Senate sanction such a charge as this without properly ascertaining the facts on which it was founded? He looked upon it in a very serious light. If the gentleman would



so modify his resolution as to prohibit the transportation of specie, except with instructions from the President, he would agree with him. As this charge had been seriously made, this bill should lie on the table with the amendment, till they could ascertain what were the instructions given by the Secretary of the Navy to the officers, as regarded the transportation of specie, and to what extent the practice had prevailed.

MR. SMITH said he was against the motion made by the gentleman from Maine, (MR. CHANDLER.) The officers of the Navy had not, in his opinion, done any thing to draw censure on them; they had acted according to their instructions. [Here MR. SMITH quoted the instructions from the documents on the table.] These, said Mr. S., being the instructions, no possible blame could be attached to the officers of the Navy, for conforming to them. MR. S. then remarked that we carried on a great and increasing trade through Alvarado and Tampico; the returns were principally in specie, for there was nothing else to be got there, and it was very unsafe to trust this on board of unarmed vessels. Government might direct one vessel, and one only, to transport the specie, but without that protection, it would be very dangerous to carry on the trade. Our manufactures, said Mr. S., are preferred to all others in the South American market, and our merchants had established their agents in the interior, to whom they sent their manufactures for sale—the returns were generally in specie; and would they endanger this trade, for fear that the naval officers should be drawn away from their employment? He could not understand this. The amendment, as it now stood, without any alteration to it, was a very good one. It might be, Mr. S. said, that the prejudices of education prevented him from seeing any harm that could arise from ships of war bringing home money from the Pacific. The trade there brought much money into the United States. The instructions forbid the Captains, on that coast, from bringing home any money but what belongs to merchants of the United States. You pass this bill, said Mr. S., and it is an interdict. How are your officers to know of the passage of this bill providing against it? or how is the President to designate the vessel that is to be employed? Large sums of money are there belonging to merchants. The agents wish to remit it, but the Captain who is there may not, under this amendment, take it, because he is not the Captain designated. We have a very extensive trade with South America. From the Middle States we supply them with vast quantities of flour in particular. They sell their cargoes at Lima. Part of the produce of the sale they lay out in copper, and the rest they have to send home in specie. But now they will be utterly unable to do so, unless the very vessel the President has designated happens to be on the spot. A great evil will arise from this, because the merchants will be compelled to send their money home in unarmed vessels. This will be known, and pirates will

lay in wait for, and capture them. If our naval officers do now and then make a little money, by bringing home specie, I, said Mr. S., shall be very well pleased. Their pay is merely a living, and their obtaining a little money by these means, does harm to nobody. Your trade in the Pacific does not suffer by it. The British allow their Captains, on the station, to make what they can, and they not only bring home money for their own merchants, but bring it for any other party that will pay them for it. It consequently has become a drug in England. What we forbid, they take. I spoke lately with an officer, who informed me that he was requested to bring home a sum of about two millions of dollars, but he dare not do it; and the British did, and received the premium for it. If the officer had been allowed to have done it, he would have made a considerable sum of money, and this quantity of specie would have been introduced into this country, instead of being carried to England. The proposed amendment, Mr. S. thought, would create a great evil to remedy a small one.

MR. CHANDLER said he had never, before this time, been given to understand that the object of building a fleet was to make them carriers of gold and silver for the profit of the officers of the Navy. He did not think the amendment would operate as his friend from Maryland seemed to think it would; if the amendment succeeded, the President might authorize all ships to be carriers, and under such circumstances as he might direct. MR. C. said his object was not to prevent the carrying of specie, under any circumstances whatever, but, if it were to be carried at all, the Navy ought not to profit by it—if their pay was not sufficient, he would say, give them more, but do not let them depend on individual merchants of the United States for their compensation.

MR. LLOYD, of Maryland, said, that he had engaged unexpectedly in the debate. He had certainly been misunderstood if he had been supposed to have said, or intended to have said, any thing disrespectful of the officers of the Navy generally. He believed they were inferior to none in respectability; but they were like other classes of men, and there might be some amongst them who were not quite what they ought to be. They were not now erecting a tribunal to decide on the merits of their naval officers—they were trying now to erect a system for the suppression of piracy, by which they might remove all the obstacles which were stated to them by the President, as existing unfavorable to that view. They were told, amongst other things, by the respectable agent, (MR. RANDALL,) that the transportation of specie through the Gulf of Mexico, has been one of the means of preventing the suppression of piracy. Was the Senate to wait till these officers were tried by court-martial before it gave credence to the President of the United States? for, MR. L. said, he considered the documents being communicated to the Senate, a sufficient

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proof that the President believed them to be true. This evidence sufficiently proved, that the system of transporting specie had been destructive to the discipline of the squadron in that quarter. What, then, were they to do? They were, if possible, to prevent a recurrence of that system, and, in so doing, they should not pretend to decide on the guilt or innocence of the officers who have commanded on that station. They were told that it was necessary that this practice should be suppressed: therefore, they ought to pass the amendment now proposed. He repeated he meant no reflection on the officers of the Navy generally. He was told by his colleague, that, to remove a small evil, a greater one was to be created; that there was a very profitable trade between the United States and the Pacific; that the returns were made in specie, and it was necessary that our ships should transport this specie. But he would ask him, where any considerable trade was carried on with these ports, was there a single dollar brought home in public armed vessels? The trade, said Mr. L., was carried on in unarmed vessels, and, month after month, vessels arrived at Baltimore, bringing home large amounts in specie—and, if this trade could be carried on in safety to Baltimore, it could be carried on to any other ports of the Union, without the intervention of public armed vessels.

With regard to the transportation of specie from the Pacific, Mr. L. said, it did not often occur that the public armed vessels brought home much from that part of the world. The money made by transportation did not result from the home trade, but from carrying money from port to port in South America. This traffic, Mr. L. contended, was a violation of the laws of nations; our ships of war were converted into insurance offices; the money of the belligerents was put on board, and our officers received the premiums. This ought certainly to be prohibited. The cupidity of the officers ought not to be suffered to compromise the peace of the nation. Nothing but the weakness of the different powers in that part of the world, had prevented our vessels from being attacked on these very grounds. If England and France were at war, would such a thing be suffered? Doubtless it would not, and it did not become the dignity of Government to countenance an act towards a weak power, that she would not do towards a stronger one. Supposing that, after this amendment should have passed, a public armed vessel should transport specie, was there any thing in this amendment to prevent it? Till the law reached the Pacific, the commanders of vessels would act under the instructions they already had. If there were any vessel to carry out this law, and the President had time, he would inform the officers there at once, and would designate the vessel which was to bring home the specie, if it brought it to American citizens, and, if he had not time, they would act under the instructions they now had—and no injury would be done to the nation.

In regard to the case cited of the British Navy, Mr. L. observed that we had a navy which could stand on its own merits, and required no precedent from the British Navy to give it consequence; and we had departed, in many instances, from the practices of the British Navy, many of which were bad enough.

Mr. HAYNE said, that this provision went to make a regulation which would affect the commerce of the United States to a great extent. The object of this bill was to suppress piracy in the West Indies, and any provision might be grafted on it that would tend to assist that object; they might declare the squadron should not be diverted from that one object; should not be sent to the coast of Africa or to Mexico; they might make any such limitations as those; but, when they undertook to make a general regulation for the commerce and Navy of the United States, they opened a wide field for discussion, and it would be impossible to perceive where it would terminate. At the last session, this very point was determined, that the interest of commerce required that this privilege should not be altogether destroyed—but that it should be regulated; accordingly, it was submitted to a committee, and great attention was bestowed on it; a bill was reported for the regulation of the practice, and all agreed to it; and it was not their fault that this was not now a law. But, if the House said they would now go into the consideration of regulations for the transportation of specie, it would be necessary for them to rise, to move to amend the amendment of the gentleman from Maine, by adding the clauses of the bill of last session. Was the Senate prepared for this? No. It would be better to suffer this bill to depend upon its own merits, and then he would agree with the gentleman on the proposition as related to the transportation of specie. This was a business of much importance to the commercial part of the Union, and he thought at least they ought to confine their deliberations to the object in view, which was the suppression of piracy in the West Indies.

On the question being taken on Mr. CHANDLER's amendment, it was decided in the negative.

Mr. LLOYD, of Massachusetts, then moved to strike out of the section the words "specially designated," and insert instead, the words *in conformity with instructions*.

Mr. L. said, he did not like to undertake to make remarks, without having evidence before him; but he felt himself compelled to do so, to do away the impression that might be made by the observation of the gentleman from Maryland, (Mr. LLOYD,) that the public ships were converted into insurance offices. This would indeed be a belligerent measure, and would justify the detention and capture of such ships. His impression was, that it would turn out that this practice was prohibited by the instructions of the Navy Department, and therefore the allegation would prove unfounded. Mr. L. said,

we had lost at one time 100,000 dollars of specie, by there being no vessel at hand to take it away. He inquired how it was possible to point out which should be the vessel? A large quantity of money might be collected together, and a vessel off the port refuse to take it, because she was not the vessel designated. Meanwhile an invading army might come down and carry off the specie, because the vessel designated to take it away was a hundred miles off, and none other dared to do it.

Mr. HOLMES, of Maine, said, that the President would point out the vessels on the West India station to perform that duty. There were vessels enough for that particular species of service, and the others should not be suffered to engage in it. He did not believe that the merchants were in any danger of losing their money by an insurrection in that quarter. The Senate, he said, were now legislating for the safety of the lives of their fellow-citizens, and to protect them against lawless butchers; and if the President gave general instructions to the fleet, there seemed to be but little danger of those instructions being abused. He esteemed the officers of the Navy, but they were but men, and might become wicked, and might become so in proportion to the temptation. With all his affection for the Navy, he had some fears that it was not on so good a standing as it was at the close of the last war. He was afraid that, if there were another war, instead of seeking the enemy as they had done before, some would be found, who would be more inclined to act as privateers. Part of our navy was in port, and part employed, and there was scarcely a breeze that blew, but what brought intelligence of discord and disagreement among the officers. One-half were engaged in sitting on courts-martial to try the others, and one of high rank was sent for home to answer for his conduct. What is the reason, said Mr. H., that, two years ago, our commerce and sailors were efficiently protected from the depredations of these pirates, and now it cannot be done, though in possession of the same means? You are told by the document on the table, from your respectable agent in Cuba. I think we are bound to believe in it, taken in connection with the supposition that the same effect is not now produced that was formerly, although the same means are employed. The complaint is made to you, and you are to prescribe the proper remedy, and you are doing it in endeavoring to restrain, in some measure, the evil complained of.

Mr. BARBOUR expressed his regret that the amendment had ever been introduced at all. The attention of the Senate had been drawn off by it from the object in view, which was the bill to suppress piracy, to one which bore altogether a distinct character. Independent of any legislative measure on the subject, if information reached the proper department, to whom was imparted the capacity to regulate it, that the naval officers had not been sufficiently

attentive to their duty, but had suffered themselves to be seduced from it, it would be their bounden duty to give the necessary instructions to put a stop to such abuses. Mr. B. inquired, whether it would not be possible to effect a compromise between the parties, so as to get clear of the general question in any instance, and to confine it to piracy in the West Indies. If, after the word piracy, *aforsaid* were added, it would get rid of all the difficulties. The effect of this provision would then be limited to the squadron in the West Indies.

Mr. TAZEWELL observed, that there were pirates in many other parts of the world besides the West Indies. The difference between the object that his colleague had in view, and that of the gentleman from Massachusetts, would best be exhibited by supposing the word *piracy* struck out from the third section, and *piracies aforsaid* put in its place. There were pirates in many parts. Slave traders were pirates; pirates there were found also in the East Indies, in the Straits of Sunda, and in the Pacific Ocean. The object of this section was to impose restrictions by law, so that no public armed vessel, engaged in the suppression of piracy, should engage in the transportation of specie. But they wanted no instructions; they had them already; for it was a portion of the duty of every public vessel to suppress pirates, wherever they found them, and there was no better way of assisting commerce than to protect it from the depredations of these freebooters.

The question being on Mr. LLOYD's motion to strike out the words "*especially designated*," and insert *in conformity with instructions*, was decided in the affirmative—ayes 27.

Mr. BARBOUR then moved the amendment he had just before suggested, (limiting the operation of the section to the West Indies,) and it was agreed to.

Mr. PARBOTT moved to strike out the words "or any other articles of freight," because public vessels were seldom or never employed in transporting any thing but specie or bullion.

After some conversation, this motion was lost; and then

The question being taken on the section, it was rejected—ayes 18, noes 20.

The Senate then adjourned.

THURSDAY, February 3.

#### *Suppression of Piracy.*

The Senate resumed the consideration of the bill to suppress Piracy in the West Indies—the amendment proposed by Mr. SMITH, (granting aid to merchantmen to arm,) being still pending.

On this amendment, and various propositions to modify it, in regard to the kind and quantity of armament required, the amount of premium, &c., a discussion took place, which continued about two hours. In this discussion, Messrs. SMITH, HOLMES of Maine, EATON, MILL, LLOYD

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of Mass., D'WOLF, LLOYD of Md., HAYNE, VAN BUREN, and FINDLAY, took part.

Finally the Senate refused to fill the blank for the premium with \$100, with \$75, and with \$50. On the latter sum, the question was decided by yeas and nays, as follows:

YEAS.—Messrs. Barbour, D'Wolf, Edwards, Hayne, Johnston of Lou., Kelly, Lloyd of Mass., Lowrie, Mills, Palmer, Parrott, Ruggles, Seymour, Smith, and Van Buren—15.

NAYS.—Messrs. Barton, Bell, Benton, Boulogny, Branch, Brown, Chandler, Clayton, Dickerson, Eaton, Elliott, Findlay, Gaillard, Holmes of Maine, Holmes of Miss., Jackson, King of Ala., King of N. Y., Knight, Lloyd of Md., Macon, Talbot, Taylor, Tazewell, Thomas, Van Dyke, and Williams—27.

The question was then taken on the amendment itself, proposed by Mr. SMITH, and negatived without a division.

Mr. MACON then, for the purpose of ascertaining, as he said, whether the Senate were disposed to act at all on this bill, on this subject of granting encouragement to the merchantmen to arm, &c., moved to strike out the fourth section of the bill, which is as follows:

"Sec. 4. *And be it further enacted*, That the commanders and crews of any armed merchant vessel of the United States be, and they are hereby, authorized to recapture any vessel and cargo taken by pirates upon the coast of the island of Cuba, or the other islands aforesaid, or on the adjoining seas; and such vessel, so recaptured, being brought into any judicial district of the United States, shall be adjudged to be restored by any court of the United States, having admiralty jurisdiction therein, to the former owner or owners of the same, he or they paying for salvage not less than one-eighth, nor more than one-half of the true value of the said vessel and cargo, at the discretion of the court, for the benefit of the re-captors, and in such proportions as the court shall direct, which payments of salvage shall be made without any deduction whatsoever."

On this motion a debate arose, of considerable duration, in which Messrs. MACON, MILLS, TAZEWELL, BARBOUR, and SMITH, took part. The debate turned principally on the expediency of inserting in this bill provisions already substantially in force; on the propriety of making any discrimination in the amount of salvage to be allowed for recaptures from the pirates in the West Indies, and recaptures elsewhere; whether proper to fix the amount by the bill, or leave it to the discretion of the court, &c. In the course of the debate, Mr. SMITH moved to strike out the words which made the section applicable alone to Cuba and the West Indies, so as to leave the provision general; but no question was taken before the adjournment.

MONDAY, February 7.

*Yaeoo Claims.*

The Senate resumed the consideration of the report of the Committee on the Judiciary, unfavorable to the petition of Ebenezer Oliver and

others, together with the motion to strike out of the resolution accompanying, the word "not," so as to reverse the report. The debate on this subject was resumed, and continued during the whole of this day's sitting.

Mr. VAN BUREN spoke at great length against the claims of the petitioners, grounding his objections on these points: That this question had been once decided by a competent tribunal, established at the instance of the parties seeking relief; that it was against the policy of the Government, and against the public interest, to open these proceedings, and, if they were opened, there was nothing in these claims founded either in justice or equity.

Mr. KELLY, Mr. SEYMOUR, and Mr. MILLS, each spoke at considerable length in reply to Mr. VAN BUREN, and in favor of the claim of the petitioners; after which the Senate adjourned.

TUESDAY, February 8.

*Election of President, &c.*

The committee on the part of the Senate, appointed to join such committee as might be appointed on the part of the House of Representatives, to ascertain and report a mode of examining the votes for President and Vice President of the United States, and of notifying the persons elected of their election, report, in part, the agreement of the Joint Committee to the following resolution:

"Resolved, That the two Houses shall assemble in the Chamber of the House of Representatives on Wednesday, the 9th day of February, 1825, at 12 o'clock; that one person be appointed teller on the part of the Senate, and two persons be appointed tellers on the part of the House, to make a list of the votes as they shall be declared; that the result shall be delivered to the President of the Senate, who shall announce to the two Houses, assembled as aforesaid, the state of the vote, and the person or persons elected, if it shall appear that a choice hath been made agreeably to the Constitution of the United States, which annunciation shall be deemed a sufficient declaration of the person or persons elected, and, together with a list of the votes, shall be entered on the Journals of the two Houses.

[The committee which made this report consisted, on the part of the Senate, of Mr. TAZEWELL, Mr. VAN DYKE, Mr. KING, of Alabama.

On the part of the House of Representatives, Mr. TAYLOR, Mr. ARCHER, Mr. THOMPSON, of Pennsylvania.]

Mr. TALBOT suggested some difficulty in the order of proceeding recommended by the committee, and Mr. HOLMES, of Maine, proposed some amendment, but which he subsequently withdrew. These suggestions gave rise to some discussion of the subject, in which Messrs. HOLMES of Maine, TALBOT, TAZEWELL, LOWRIE, BARBOUR, JOHNSON of Kentucky, KING of Alabama, and VAN DYKE, participated.

Mr. TAZEWELL went, at some length, into an explanation and justification of the course

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adopted by the committee. In some points, in which the committee on the part of the Senate would have preferred a different arrangement, they were overruled by the committee on the part of the other House, which had its rights as well as the Senate. The mode reported by the committee, was precisely, however, the same as that adopted by the Senate, and agreed on by the two Houses, on similar occasions, from the year 1805 to 1817, inclusive.

The report of the committee was concurred in.

Mr. TAZEWELL was appointed teller on the part of the Senate.

WEDNESDAY, February 9.

*Election of President by the House of Representatives.*

At twelve o'clock, the Senate proceeded to the Hall of the House of Representatives, agreeably to joint resolution, for the purpose of opening and counting the Electoral votes for President and Vice President of the United States.

At half-past two o'clock, the Senate returned to its Chamber, and then adjourned.

FRIDAY, February 11.

*Notification of Vice President's Election.*

Mr. TAZEWELL submitted the following resolution:

"Resolved, That the President of the United States be requested to cause to be transmitted to John C. Calhoun, of South Carolina, Vice President elect of the United States, notification of his election to that office, and that the President of the Senate do make and sign a certificate in the words following, to wit:

"Be it known, That the Senate and House of Representatives of the United States of America, being convened at the city of Washington, on the second Wednesday of February, in the year of our Lord one thousand eight hundred and twenty-five, the underwritten President of the Senate pro tempore, did, in the presence of the said Senate and House of Representatives, open all the certificates and count all the votes of the Electors for a President and Vice President of the United States: Whereupon, it appeared that John C. Calhoun, of South Carolina, had a majority of the votes of the Electors, as Vice President; by all which it appears that John C. Calhoun, of South Carolina, has been duly elected Vice President of the United States, agreeably to the constitution.

"In witness whereof, I have hereunto set my hand, this — day of February, 1825.

"And that the President of the Senate do cause the certificate aforesaid to be laid before the President of the United States, with this resolution."

On motion of Mr. KING, of Alabama, the resolution was forthwith considered, and was agreed to.

TUESDAY, February 15.

The Senate resumed, as in Committee of the Whole, (Mr. KING, of Alabama, in the chair,)

the bill to amend the Judicial System of the United States, and to provide for three additional Circuit Courts; the question being on recommitting the bill with instructions.

Mr. JOHNSON, of Kentucky, offered a few further remarks explanatory of the nature of the bill, and called for the yeas and nays.

Mr. TAZEWELL, of Virginia, adverted to the importance of the measure, and the impossibility of its receiving the consideration which it merited, and passing through both Houses of Congress the present session. He then moved that the bill and resolution be indefinitely postponed, and pledged himself, should the postponement take place, to co-operate with the honorable mover of the bill, in producing a plan which should ensure the attainment of the object he had in view, by the best means that could be employed.

Mr. TALBOT hoped that the bill would not be postponed, and went into a long argument to show that the Western States, who had been for years asking that the benefits of the circuit system should be allowed them, should not longer be denied a just and common right. He proceeded to reply at some length to the arguments urged against the bill, when it was last before the Senate, and contended that the present bill was only an attempt to perfect a system which had received the approbation of the country for more than thirty years, a system copied from the English Judiciary, which, whatever might be said of the Government, was the pride of the country and the admiration of the world.

The question being taken on the indefinite postponement of the bill, it was decided in the negative, by yeas and nays, as follows:

YEAS.—Messrs. Barbour, Barton, Branch, Clayton, Cobb, Edwards, Elliott, Findlay, King of New York, Lowrie, Macon, Mills, Taylor, Tazewell, Van Buren, Van Dyke—16.

NAYS.—Messrs. Bell, Benton, Boulligny, Brown, Chandler, Dickerson, Eaton, Gaillard, Holmes of Maine, Holmes of Mississippi, Jackson, Johnson of Kentucky, Johnston of Louisiana, Kelly, King of Alabama, Knight, Lanman, Lloyd of Massachusetts, McLean, Noble, Palmer, Parrott, Ruggles, Seymour, Smith, Talbot, Thomas, Williams—28.

The question then recurring on the motion to recommit the bill with instructions, The Senate adjourned.

WEDNESDAY, February 16.

The Senate again took up, in Committee of the Whole, the bill to amend the judicial system of the United States, and for the appointment of three additional circuit judges, (in the Western States,) the question pending being on the recommitment of the bill to the Judiciary Committee.

Mr. TAZEWELL then, for the purpose, he said, of trying the sense of the Senate on the most important feature of the bill, moved so to amend it as to provide that the three additional

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circuit judges shall *not* be justices of the Supreme Court.

Mr. JOHNSON, of Kentucky, said, that the effect of this amendment would be to degrade the Western States. There was a clause in the constitution, that States, on coming into the Union, should receive equal rights and privileges. He had said, on a former occasion, that it was not to be expected that these States were, in their infancy, to receive, at once, all the benefits of the system, but now, after so much time had passed, and their claims were so generally acknowledged, they were fully entitled to be placed on an equality with the other States; and what was it that was now offered to them? They would allow them circuit judges, but they were not to occupy a seat on the Supreme Bench of the Union. Against this he protested. Mr. J. made a few more remarks in opposition to this motion, when

Mr. TAZEWELL offered, succinctly, his reasons for submitting his amendment, and to show the unreasonableness and impropriety of different parts of the country claiming an exact portion of judges on the bench of the Supreme Court, and the absurdity of resorting to the principle of judicial representation to procure impartial justice, &c.

Mr. JOHNSON, of Kentucky, said he wished to say a few words in answer to the gentleman from Virginia, and first, as to judicial representation. He supposed that it was the duty of every individual to put the precise construction on the words in debate, which the individual using those words intended to communicate. If, therefore, from the defectiveness of his language, the gentleman had extended his meaning of the words judicial representation, he hoped he should receive the pardon of that honorable body, in giving a short explanation of his meaning. It might be the same thing to the honorable gentleman whether the man who was to decide on the rights of his constituents came from one of the distant States, or any corner of this Union. Mr. J. said he wanted Kentucky to decide for Kentucky. They wanted the measure of justice extended to them that had been extended to the old States for forty years, and yet their doctrine was said to be heretical. He had said before, and he repeated it, they had a right to a judicial representation on the bench of the Supreme Court, in the sense in which he took it. He meant only the extension of the system to all the States—of that system which secured to Virginia two Supreme Judges, and he did not speak of it in any other view.

Mr. J. wished to do away with the trouble and confusion that had arisen in this country from the words, impairing the obligation of contracts, but he did not deny the solemnity of the principle the words contained. He only spoke of the confusion that had been introduced into the judiciary of the whole Union by those words. He thought the gentleman could not tell him what was the construction put on those words by the Supreme Court of the Union. It

had been decided many times, in different ways, in the State he (Mr. J.) represented. He complained of the words because they allowed of a latitude that involved State rights and State sovereignty, of which Virginia had complained as loud as any. He did say, and he repeated it, those words were introduced into the constitution without intending to give them any importance, yet more confusion had grown out of them than from any words in the constitution for many years past.

If the doctrine were true, that responsibility diminished in an inverse ratio as numbers increased, then the body to whom he now addressed himself might as well consist of twenty-four as of forty-eight members. The House of Representatives would be better with half its present number. The same principle would apply—and the Supreme Court had better consist of one member than seven.

He thought that equal justice would never be extended to them, without they were fairly represented, each judge having a district allotted to him, in which he could reasonably move. They did not wish for inferior judges, who were, in a manner, disfranchised, to be sent amongst them; that was not the remedy they wanted. What they asked for was a remedy which should strike at the root of the evil; and he did think they would be degraded if they received judges who were disfranchised from sitting on the Supreme Bench.

He should, he said, be unwilling to trust the decision of those great constitutional questions, which might humble the State sovereignties to the dust, to any tribunal on earth that was not direct from the people, and for the decisions of such questions they ought to have a majority of six instead of three, by increasing the number of judges. He trusted, therefore, that the amendment of the gentleman from Virginia would not prevail.

Mr. TALBOT, of Kentucky, rose and said that the immense importance of the proposition which was the subject of this discussion, not only to that section of the Union for whose immediate and more peculiar benefit it is calculated and intended to operate, but to every portion of this widely extended Union, must be his apology for attempting some opposition to the motion of the honorable gentleman from Virginia, who, in addition to the proposition of his honorable colleague, (Mr. BARBOUR,) has favored us with his new *projet* as a substitute for the bill upon your table.

This last amendment, offered by the gentleman from Virginia, (Mr. TAZEWELL,) the subject of the present discussion, is, to my mind, Mr. President, the more inadmissible—I must say, intolerable, than all the propositions which have been submitted to this honorable body, or for the reformation or improvement of the present organization of our judicial system. Of the importance of this department of our national institutions, of that department which is concerned in the daily administration of dis-

tributive justice to the citizens of these United States, by a speedy, correct, and impartial decision of their various controversies, which arise to disturb the happiness of domestic or social life, we cannot speak too strongly, or estimate too highly. The effects and operations of the other departments of your Government—of your legislative and executive—the law-giving and the law-executing functionaries of national authority, you feel the force and enjoy the benefits at intervals. But the action of the judicial functions is that which, as it pervades more intimately the affairs and concerns of men, has an almost incessant and constant influence on the society, the peace and happiness of which it was instituted to preserve and promote. With what caution and deliberate reflection, aided by all the lights of wisdom and matured experience, ought we to approach this interesting subject! Influenced by these considerations, the friends of the proposition embraced by the bill on your table, contemplate by its provisions no radical change in the organization of your judicial system, which has been so long in operation; a system which, framed by the experienced wisdom of many of those sages to whom the glorious charter of our liberties, the Federal Constitution, owes its birth, claims to participate largely in the advantages which so much wisdom, skill, and political knowledge and experience could bring to so great a work as the organization of a judicial system, corresponding to the wants, wishes, and interests of our extensive confederation.

This system, Mr. President, established by the act of 1789, framed in so much wisdom and experience—sanctioned by such names as the Congress of the United States of that period enrolled in the catalogue of its members—adopted as its model, for the outlines of its institution, that of the British Empire, from whom we derive our origin, and many of our inestimable institutions; and whose Judiciary, whatever we may think or say of the faults or defects of other departments of her Government—of the inequality of representation, or corruption of her House of Commons—of the aristocratic and dangerous character of her House of Lords, or of the arbitrary prerogatives of her King—as regards her Judiciary, it has been, in its general organization, in the purity and correctness of its administration of distributive justice, the pride of that nation, and the admiration of the civilized world. The union of original and appellate jurisdiction in the twelve judges of Westminster Hall, who, in their allotted circuits, traverse the extent of the British Isle, holding in each county, or shire, of that kingdom, a court of *Nisi Prius*, for the trial of causes arising within them, and adjourning questions of novelty, difficulty, or peculiar magnitude, to the Court of King's Bench, or other revising and controlling court of appellate jurisdiction at Westminster—has never yet been held as a blemish, much less of fatal error in the organization of the British Courts. Nor has

the number of twelve judges, of which the courts of Westminster are composed, been complained of as inadequate to the discharge of the functions incident to the holding the courts of *Nisi Prius*, from age, infirmity, or any of those causes which are alleged by honorable gentlemen, as disqualifying the judges of our own Supreme Court from the discharge of the functions of circuit judges, to which they have been found entirely competent through the course of our long experience for a period of five and thirty years.

If this period, Mr. President, having its origin almost coeval with the origin and introduction of our happy form of government, during which a generation has passed away, has marked the present system with no striking imperfection, with no flagrant abuse, indicating incurable defects in its general organization or prominent features—if, on the contrary, this faithful test of long and tried experience, the surest foundation of human wisdom, and best guarantee for the permanency, as well as value of all human institutions, has affixed the stamp of its approbation on its value and utility, this tried experience and this long approval of the present system, by the American people, ought to form a strong barrier, which they have thrown around these existing institutions, not to be lightly or easily prostrated by the experiments of new and untried theories of mere speculation. Unless indeed, such new theories shall be found, on examination, to be based upon foundations of reason and argument of the most satisfactory and conclusive character. Such, to my mind, Mr. President, have not been the character or force of the arguments presented to the Senate by either of the honorable gentlemen from Virginia, in favor of their respective *projets*, with which we have been favored in the course of this debate.

The plan of my honorable friend, (Mr. BARBOUR,) who moved you for the recommitment of this bill, for the purpose of maturing his *projet*, is to exempt the present judges, who constitute the Supreme Court of the United States, from all the duties of presiding in, or holding the Circuit Courts, assigning, by his plan, all the duties of those courts, with any other appertaining to the exercise of original jurisdiction, to a new corps of judges, to be created and appointed for this purpose, with the creation of salaries adequate to the attainment of this object. My honorable friend, passing by the considerations of the increase in the national expenditure, as matters unworthy his sublime genius and contemplations; and forgetful that the plan in substance, which he now proposes, was not only offered, but adopted, and put into prompt and immediate operation some five and twenty years ago, and was then found so little adapted to the interests or the sentiments of the American people, as to call from them at once, in terms too loud and strong to be resisted or denied, an imperious demand for its repeal. A repeal was as promptly ac-

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ceded to by the councils of the nation, and a newly created host of judges, stripped of their salaries, their offices, and their honors, before time had been given them to enjoy, or even taste the delicious flavor of the dainties which had been placed before them—to warm the seats on which they had been placed, or to be warmed by the ermines with which they had been enshrouded.

The honorable gentlemen from Virginia both object to increase the number of the judges who at present compose this tribunal, which is urged and claimed to be one of the objects of the bill on your table. This objection, although plausible as it first presents itself, to increase the number of a tribunal now consisting of seven judges, will soon vanish on the slightest examination of the nature, extent, and importance of the functions bestowed, and which, by our constitution, as it now exists, must necessarily be vested in this most tremendous and awful tribunal; for, such are its characteristics of power and jurisdiction, as legitimately vested in this court by the terms as well as the fair scope and objects of the Federal Constitution; powers and jurisdiction far beyond those of the far-famed Areopagus of Athens, Mr. President, transcendent, as they are known to have been, presiding, as it did, in the pride and plenitude of its powers, not only over the laws, and deciding the controversies arising between the citizens of that powerful and splendid Republic, but empowered to watch over the police of the city of Athens and its various territories, but also to superintend the morals and the habits, and to regulate even the pleasures and amusements of the Athenian people. The Supreme Court of the United States is not only vested with powers and jurisdiction the most ample, for the decision of all questions and controversies arising under the Constitution of the United States, the great charter of our rights and liberties; of all laws enacted under its authority; of all our controversies arising with foreign nations, whether originating from alleged infractions of treaty stipulations; violations of the public law, as between ourselves and foreign powers; the whole class of admiralty and maritime jurisdiction, embracing the whole of our external, and much, too, of the internal commerce of this widely extended empire; including all the rights of peace and war. These may be called its judicial powers; and, vast and comprehensive as they are in their details and in the aggregate, what are they compared with that vast political power which is wielded by this tribunal in its character of judge? and judge in the last resort between the State and Federal Governments, in all the great and complicated questions of constitutional law, arising from the mutual action of the State and Federal authorities on each other. It is the exercise of the powers of this latter class, Mr. President, which, in our complicated system of Federal and State authorities, the most transcendent jurisdiction with which human tribunal

was ever vested. It is in this character of judge and of mediator too, for they should be united, between the conflicting powers of Federal and State sovereignties, each sovereign and uncontrollable when acting within its legitimate sphere, that, poising the scale of even-handed justice, this august tribunal holds in its hands the destinies of this mighty nation; in which it stands as arbiter between the nations; and it is at the foot of this tribunal that the constitution and laws of every State in this Union may be brought for final adjudication, and before which they may be prostrated.

And it is by the wise, mild, and guiding influence of this solemn tribunal, that the State Governments, revolving in the political, like the planets around the great source of heat and light in the natural world, are to be preserved, as by an attractive or centripetal force from flying off, by some temporary or transient disorder in its movements, from its regular orbit; and, by its aberration from the path prescribed by the constitution, producing confusion and dismay, if not ruin and destruction, in this beautiful but complicated system of our political union.

When we therefore view, as we should do, Mr. President, the vast and complicated powers of this tribunal, for the purpose of ascertaining the more perfect organization of which it is susceptible, for the more perfect accomplishment of its various functions, the sure and great desideratum is, that it be so constituted, as to bring within its reach and in the possession of its members, that knowledge, not only of the constitutions and the statutory regulations, but the unwritten as well as the written laws, together with the customs, usages, and even the manners and habits, various and diversified as they are known to be, of the four-and-twenty States, which constitute our great and extended confederation. For, if these Judges possess the power, and no one denies they have, of declaring, as null and void, and sweeping from the statute book of all and every State of this Union, not only any one law, but whole systems of laws which may be deemed by them to come in contact or collision with the constitution, laws, treaties, or authorities of the United States, or even with certain principles of ethics, or the penal code, the sanctions of which are placed under the guarantee of the Federal Constitution; in this view of the powers of this tribunal, we are called upon to say, whether ten Judges, of which number the bill on your table proposes that court shall hereafter be composed, is too large a one for the attainment of the great purposes of its institution.

The gentleman from Virginia, most remote on my left, (Mr. TAZEWELL,) insists that the number of which that tribunal is now composed, is too large; that he would desire to see it less; and objects, too, to increase to the number of ten, because it being an even number requires more than a majority of a single Judge to reverse the judgment of an inferior



tribunal; and to the principle of increased numbers in the composition of judicial tribunals, because, as he alleges, by adding such increase of number, you diminish the responsibility of the judges; it being a maxim with him in politics, that, in proportion to the increase of numbers in those who are to exercise authority, is the decrease of responsibility to those who delegate it.

In reply to this objection, Mr. President, it may be safely admitted, that responsibility is a principle of great weight and importance in the delegation of political power. That there is much, too, in the responsibility of Judges to the depositors of the powers which they may be disposed to abuse; that in this responsibility is regarded the honor, the conscience, the reputation of the Judge; the awful sanctions under which he acts; his amenability to human tribunals by impeachment; to the people from whom he derives his power, and for whose good he ought to exercise it. That after all that could be asked or conceded to this principle in the constitution of these tribunals, however beautiful or valuable the principle in theory may appear, it requires but little reflection or observation to convince us, that, from the unfrequency of attempts to bring to any practical beneficial result by impeachment and removal from office of the Judge who shall have violated any of these solemn sanctions; and the total inadequacy of such a result in case of conviction, to afford redress or compensation for the injury inflicted on the individual or the community, that it is not to this principle of responsibility we are to look as that of primary importance in the organization of the judicial power, as the means of securing those vital and essential benefits which a wise and happy organization of this important tribunal is calculated to ensure to the citizens of this nation. No, Mr. President, it is not to the responsibility of the Judges of this tribunal, vast and weighty as that responsibility is thought to be, that you are to look mainly for the wisdom, equity, and justice of its decisions. It is to the wisdom, it is to the extensive, diversified, and profound knowledge, political, judicial, as well as municipal, of the constitution and laws, not only of the United States, but each and every State composing this Union; with all their diversities, as created and modified by climate, by education, by habits, by interest, and a thousand other causes. It is to this knowledge, to be acquired by all the means of reading, observation, experience, and practice, and to the virtue of your Judges, more than to their responsibility, that you are to look for all those benefits and all those blessings which may be destined to flow, as the inheritance of unborn millions, from the enlightened and correct exposition of the constitutions and laws of this Union, and of the States of which it is composed. The great desideratum in the members of this tribunal, acknowledged on all hands to be so important, is a knowledge, perfect and

complete, of the constitutions, the laws, statutory as well as the common law, the unwritten as well as that which is written, with the various customs and usages of the different States of the Union, as well as of the numerous judicial decisions of the State tribunals, by which certain fixed constructions and interpretations have been given to the constitution and laws of each. How is this knowledge, so essential, so indispensable, to be obtained? And is this mass of information upon points so essential to the discharge of the judicial functions in the distribution of justice in individual controversies, and of such infinite consequence to the happiness, prosperity, and harmony of the Union, more easily to be acquired by a small number of Judges, composing this tribunal, created within the favorite precincts of this ten miles square, employed in the exercise of appellate functions only; or by a number of Judges equal to that proposed by the present bill, discharging not only those appellate duties, as under the present system, but also traversing by sections as allotted amongst them, every portion of this widely extended empire; some one of them passing into and presiding in the National Tribunal in every State, and thus, by constant observation, successive experience, by the arguments of enlightened counsel, reared and educated in the bosom of the States respectively, as well as from daily social intercourse, making constant and successive acquisitions from the highest source, from the fountain head, and, from thence, communicating to their brethren of this bench, a complete and perfect knowledge of the code of each individual State, with all the diversities and modifications of each. And it is in this mode alone, that the Judges of your Supreme Tribunal are to continue, as they have heretofore, in the active and constant discharge of their functions of Judges of the courts of original jurisdiction, by presiding in the Circuit Courts, that they will come imbued with a knowledge of the constitutions, laws, and usages of the several States, the history of their birth, the causes of those successive changes, the objects of the modifications which they may have successively undergone, and the sense which has been assigned by successive adjudications of the tribunals of the States, by the interpretations which they have given to the various clauses of those laws and constitutions which have for ages constituted the safeguard of the citizen, the guarantee of all his rights, and which contains the charter of all his civil liberties.

All this information, so difficult in the acquisition, so complicated in its thousand details, so difficult, so impossible of access, at the seat of Government, my honorable friend (Mr. BARBOUR) seems to think may be acquired through the medium of the counsel at the bar, who will follow the causes from the States in which the controversies originate, to the bar of this court, for final adjudication. But the slightest reflection will satisfy my friend himself, that this

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source of information, on topics of which it is so indispensable that the court should be fully and well informed, is of all others the most defective and fallacious. But suppose that neither the magnitude of the cause, nor the circumstances of the parties, will justify the employment of any counsel either at home or abroad; or suppose that counsel on one side only is sent from the State from which the appeal is brought for an adjudication, which in its consequences may affect the interest or touch the liberties or franchises of the citizens of the whole State; then, in such a case, are the judges of this tribunal limited in the exercise of their judicial functions to the boundaries of this magic circle, within the ten miles square? Where is he to find the clue to guide him through the labyrinth of complicated laws, perhaps obscurely penned; in phraseology of ambiguous or doubtful meaning, which he is then for the first time called upon to adjudicate, an utter stranger? The most virtuous, enlightened, and upright Judge, thus circumstanced, must feel embarrassment and dismay; exposed to fall into error and mistake; and from which neither the books in his own, nor the public library here, nor any other source of information within his reach, will afford him means to escape.

But, in opposition to the proposition of my honorable friend from Virginia, my honorable friend from Maine, who sits before me, (Mr. HOLMES,) ventured, in a passing remark or two, to suggest, that the Judges of this august tribunal were *sufficiently national*, as he feared already, as evidenced by the tenor of their recent adjudications, touching this delicate and important topic of their jurisdiction, the collision between the National and State authorities; and ventured to suggest his fears, that an entire separation of the functions and duties now exercised by the Judges of the Supreme Court, as Judges of the Circuit Courts residing in the several States, agreeably to the *projet* under consideration, was not calculated to render those Judges less national in their sentiments and opinions on this important branch of their jurisdiction. At this suggestion, my honorable friend takes fire, and reprobates in terms of the severest censure, what he chose to consider as an assault on the dignity or purity of the members of this bench. Now, for myself, Mr. President, I must confess, that to my mind, there was nothing in the remark of the honorable gentleman from Maine, calculated to excite the ire, or to call for rebuke from the more fastidious advocate for decorum in debate, as regards the dignity of this body to whom it was addressed, or incompatible with either the dignity or purity of the members of the dignified tribunal to whom the remark referred.

It is most true, that the Supreme Court of the United States, as the head of one of the great departments of our free and happy Government, deserves, and should receive all that personal respect and regard which their exalted situation is calculated to inspire. But it is

equally true, that it is essential to the freedom of debate in a legislative body, vested with powers, and clothed with solemn duties, so to model and organize this tribunal as to adapt it, in the best manner possible, to the correct exercise of these important duties, for which it was designed by the constitution, to speak of it as it is, and with a decent, though respectful freedom.

In discharge of this high and solemn duty, I must take leave to repeat the question asked by the honorable Senator from Maine, Whether there is not some cause to apprehend that, if divested of all original jurisdiction, and dispensed from the exercise of functions which require the Judges to pass into, and preside in the tribunals of original jurisdiction within the respective States, and for the exercise of the appellate powers with which they are invested, limited to the range, and placed within the attractions of this favorite ten miles square, the seat of national splendor and national power—a spirit, a little *too national*, may not be imbibed by the members of this tribunal, august and dignified as it is? The vast and transcendent powers and jurisdiction of this court, with the importance of a correct, enlightened, and impartial exercise of those powers, to the future peace, happiness, and prosperity of our Union, has been briefly hinted at, but not the singularly important and delicate position which this tribunal occupies, as the judge and mediator in all conflicts and collisions between the powers of National and State sovereignties, between whom it is so important to the prosperity and happiness of all, that the scales of Justice between them should be poised by the most even hand; yet it is obvious, from the very nature and organization of this tribunal, deriving its existence, the appointment of its Judges, from one of those powers, the Government of the nation, that power from which all its honors flow—from whom the emoluments and rewards of office are received—and to which all its responsibilities, as recognized by the constitution, are due. Is there not, Mr. President, in the very origin and organization of this tribunal, if not a radical defect, at least enough to justify every wise and cautious statesman, so to regulate the duties of the members of this tribunal, as to correct, as far as practicable, any apprehended bias resulting from the nature and organization of this tribunal, by such regulations as wisdom may prescribe, or long experience suggest? And how can this object, so desirable, be promoted with more success than by the organization of the present judicial system of the United States, by which the Judges, in discharge of their functions of Circuit Judges, are compelled, in their allotted circuits, to visit all the various States of our extensive Union, and in the discharge of their judicial functions, as well as the social intercourse which dwells with the citizens and inhabitants, preserves in the bosoms of the Judges of this tribunal, sentiments and feelings connected, in some degree,

with the just pride, the sovereignty, and constitutional independence of the States? The feelings and recollections of these may not always remain so vivid in the breasts of judges permanently residing within the bosom of no particular State, but within a peculiar dominion of the United States. These suggestions, Mr. President, are the offspring of no unreasonable distrust of human virtue, much less of any want of respect for the truly revered and exalted characters of the Judges by whom that bench is filled, but from a consciousness of the infirmities of human nature, and a desire to guard, as far as human wisdom can, against their mischievous tendencies—suggestions, the wisdom of which will not be controverted until, indeed, we shall be convinced that angels, in the shape of men, have come down to judge for, as well as to rule over us.

But the sensibility of my honorable friend, to a supposed attack on the purity of this tribunal, which none has, or, I presume, will call in question, even by insinuation the most remote, was as uncalled for as unexpected, as regards the quarter from whence this chivalric spirit comes. For, among the States of this Union, which, from New Hampshire, in the North, to Georgia, in the South, embracing Ohio and Kentucky, in the West, have, in succession, felt the glow of indignant resentment at the real or fancied dangers to which they have been exposed, from the real or imagined infringement of their sovereign rights, from the claim or exercise of jurisdiction by this tribunal, Virginia surely has not been without her private griefs. Nor has the jealous vigilance of that proud, high-minded State, felt, or indicated, a disposition to acquiesce tamely, and without a struggle, in the claims of jurisdiction on the part of this Supreme Court of the Nation, touching, as she conceived, her rights and prerogatives as one of the members of this Union of independent States. Nor has she been slow or feeble in the measures she pursued, in vindication of her rights thus supposed to be endangered. Passing by her manly and spirited opposition to the sedition act, and the conduct of the Federal Judges in enforcing its sanctions in violation of the Constitution of the United States—need I remind my honorable friend of the firm and decided stand taken by the Supreme Court of that patriotic State, a tribunal filled by men illustrious for their virtuous and enlightened minds, to the jurisdiction claimed and exercised by the Supreme Court of the United States, in the famous case of *Fairfax and Hunter*; a case in which, after solemn argument and mature deliberation, the Supreme Court of that State, if I am not mistaken, not only decided against the power thus claimed and exercised by this tribunal of the nation, to take jurisdiction by writ of error, of cases of private right which had been finally decided by that court as the tribunal of the last resort within the State; but resting on the sovereign power of the State, refused peremptorily to

obey the mandate of the Supreme Court of the United States. A refusal which, but for the mild and conciliatory course adopted by this latter tribunal, of directing the execution of their mandate by their own immediate officer, might have brought at once the authorities of the State and Federal Government into a state of fearful and alarming conflict; at the possible consequences of which every real patriot must shudder. Nor was this the only occasion in which this high-minded and patriotic State has evinced alarm at the encroachment of this tribunal, as she deemed them, on her power and jurisdiction as an independent State. A case, much more recent than that just alluded to, and of familiar recollection to us all—the case of *Cohens against the Commonwealth of Virginia*, in which a jurisdiction was again claimed and exercised under the 25th section of the Judiciary Act of 1789, by the Supreme Court of the United States, to arrest the Supreme Tribunal, or court of law of that State, having jurisdiction in the case, in the regular enforcement, in the usual form, by information, of one of her penal laws—a law prohibiting the vending of tickets in any lotteries but those established by the authority of the State. The enforcement of the wholesome sanctions of this law was deemed important, not only in the protection of the morals and preservation of the interests of her citizens, but against the operation of a by-law of the Corporation of this city, passed in pursuance of an act of Congress, and controlling in its operation the penal and municipal regulations of the State. That Virginia did feel some alarm at this apprehended violation of her rights as a sovereign and independent State, her rights, by wholesome regulations, to the internal police of her own State, on points entirely municipal; and that some of her most enlightened statesmen were alarmed at the attempt to arraign at the bar of the Federal Tribunal, as a party in the record, the State itself, which was made a party to the case, is evinced by the fact, that counsel of the first distinction, the most eminent in their public councils, was deputed and appointed on the part of the Commonwealth, to maintain its sovereign rights, believed to be infringed by this claim of jurisdiction on the part of the Supreme Court of the United States. That this jurisdiction, thus claimed by the court of the Nation, to decide on the sovereign rights of the States by appeal, or writ of error, was maintained by this tribunal, must be in the recollection of all who are in the habit of attending to subjects of this nature. And that Virginia escaped from what she might possibly have supposed the mortifying, if not degrading, consequences of a defeat in this struggle for the maintenance of her sovereign rights, is to be ascribed alone to the peculiar phraseology of the act of Congress by which this power of creating lotteries is delegated to the corporation, not to any defect of power on the part of Congress, as the exclusive legislature over the ten miles square, so to have

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*On the Judiciary.*

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framed this delegation of power, as to have arrested the power of that Commonwealth in the established enforcement of suitable regulations for the government of its own citizens in relation to the internal police thereof.

But these occurrences, Mr. President, strongly calculated as they are to arouse the feelings and excite the apprehensions of the patriotic statesman, anxious for the perpetuation of our happy Union, like most other political occurrences, transient as a winter's storm, quickly pass away and are forgotten: and those States, once so agitated by the supposed danger of tyranny or usurpation, sink into profound repose. Thus Maryland, Kentucky, and Ohio, in their turns, have had to encounter the power and influence of that great engine of political power, the Bank of the United States; have been severely attacked, and, after a feeble and ineffectual struggle, have been successively vanquished in the contest; have contended without aid or co-operation from their sister States, who, aloof from the contest, have seemed indifferent to their fate. Nor have the generous sympathies of their brethren been sufficiently enlisted, to elicit even a salutary jealousy of the ultimate consequences to be feared from a succession of such attacks and triumphant victories over the several States on the part of the General Government and the institutions to which it has given birth.

I trust, however, Mr. President, that, in these remarks, briefly touching on the apprehended tendency of some recent decisions of this tribunal, for which, as well as its several members, I entertain none but the most respectful sentiments, it will not be understood that I mean by insinuation to cast the slightest shade of imputation on the purity of intention or the correctness of judgment with which justice is impartially dispensed from this exalted bench. All I mean to contend for is, and it is certainly open to candid and fair remark, that, from the nature and organization of this tribunal, deriving all its powers, honors, and emoluments, from the Government of the nation, to which all its responsibilities alone are due; that such is the present imperfect state of human nature, unless attributes more than human be ascribed to the members of whom it is composed, that there is some cause to apprehend an unconscious bias; a bias the more to be apprehended, because it may be an inmate of the more virtuous mind. And, that it is therefore the duty of every patriotic and enlightened legislator, to correct the tendencies to such dangerous bias, by any means which legislation is competent to effect; I have therefore endeavored, I trust not in vain, to argue, that it is by the discharge of the duties of Circuit Judges within the several States according to the present wise organization of the Courts of the United States, and the associations which the discharge of those duties produce, that a competent knowledge of the constitutions, laws, and customs, and all the variety of their modifications, can

be best acquired by the members of the bench of the Supreme Court of the United States, and those feelings of equal regard and veneration for the sovereign rights of the individual States be imbibed and cherished, which alone afford a fair promise of the correct discharge of the important duties of impartial umpires between the governments of the States and that of the nation, so imperatively demanded by the theory of our complicated forms of government, and on which the happiness and prosperity of our common country, and the perpetuation of its free institutions, so essentially depend.

The present system of organization of the courts of the United States, founded in much wisdom, framed by many of the sages to whom we are indebted for the great charter of our liberties, sanctioned by a happy experience of thirty-five years; adapted to the administration of justice by the same impartial means; and well adapted to the number and extent of the States which at that time composed our Union; the benefits of which, by a simple extension of the system, and application of its principles to the nine Western States, which have swelled the number and added to the wealth, power, and resources of the Union, is all we ask, is all the bill on your table contemplates, and is that to which no honorable member of this body has denied our unquestioned right.

On what ground, then, I ask, is it now to be withheld? The demand is not now for the first time urged on the councils of the nation. For several successive sessions it has been solicited, urged, and pressed for; but as yet in vain. On the part of the opposers of this bill, what is urged in opposition? Why, time, time for deliberation! We, the friends of the measure, are preparing something new of vast importance. What we ask, seems to be perfectly fair and reasonable. This procrastination, Mr. President, from the last to the present session, from the commencement of the present to almost the point of its termination, is that of which the friends of this measure have a right to complain. The advocates of the measure seek for the establishment of no new principle; no new modification of those which are old and well established. A simple extension of the principle of the Federal Courts, to meet the increased numbers of our States and population. It is what imperious justice gives us a right to ask; what the councils of the nation cannot in justice hesitate to grant. Hope, already long deferred, sickens at the apprehensions of further delay in the execution of this necessary work; and the people of the West, already deeply injured by the long delays which have already intervened, cannot much longer fold their arms in silent acquiescence at the injustice of such repeated and unjustified delays.

Let me bring home the force of these remarks, to the bosoms of honorable Senators, representing here the ancient States, which, from the origin of your system, have been in the constant and full possession of its benefits,

to say, what would be their emotions, if it were proposed that Virginia, for example, should no longer have a member of the bench of the Supreme Tribunal to preside in the Circuit Courts, but should be content with her District Judge? Yet, would such deprivation be no more unjust, than the denial of the same advantage to each of the new States which have been admitted into the Union since this system was adopted, and received its present form?

Upon this hasty and desultory sketch of the views on which this bill is advocated by its friends, I will, with the utmost cheerfulness, submit it to its fate, only deprecating, as I do most fervently, any attempt on the part of its opposers, by farther unnecessary delays at this advanced stage of the session, to defer its passage without a direct decision on its merits—of the correctness and justice of which I have nothing to apprehend.

Mr. FINDLAY, of Pennsylvania, made a few remarks expressive of the doubt he still felt on the subject, notwithstanding all that had been said; and concluded by moving an adjournment.

The Senate adjourned.

THURSDAY, February 17.

#### Judicial System.

The Senate resumed, as in Committee of the Whole, the bill to amend the Judicial System of the United States, and to authorize the creation of three additional Circuit Courts: Mr. TAZEWELL's motion to exclude the additional circuit judges from being judges of the Supreme Court, still pending.

Mr. TAZEWELL submitted one or two additional reasons which weighed with him in offering his amendment; and

Mr. BAETON, of Missouri, briefly stated his reasons for opposing the amendment; and also why he disapproved of the bill as it stood.

The question was then taken, without further debate, on Mr. TAZEWELL's motion so to amend the bill that the additional circuit judges shall not be justices of the Supreme Court, and was decided in the negative by the following vote:

YEAS.—Messrs. Branch, Clayton, Cobb, D'Wolf, Elliott, Tazewell—6.

NAYS.—Messrs. Barbour, Barton, Bell, Benton, Boulogny, Brown, Chandler, Dickerson, Eaton, Edwards, Findlay, Gaillard, Hayne, Holmes of Maine, Holmes of Miss., Jackson, Johnson of Ken., Johnston of Louisiana, Kelly, King of Alabama, King of New York, Knight, Lanman, Lloyd of Mass., McIlvaine, McLean, Macon, Mills, Noble, Palmer, Parrott, Ruggles, Seymour, Smith, Talbot, Taylor, Thomas, Van Buren, Van Dyke, Williams—40.

Mr. VAN BUREN thought it apparent, from the votes of to-day, that the Senate was not only determined on acting on this subject, but was decidedly in favor of the principle contained in the bill; that is, the appointment of additional circuit judges, who should be also judges of the Supreme Court. For himself, he preferred

the plan that had been offered by Mr. BARBOUR; the separation of the Supreme Court from circuit duties; but, as the Senate favored the plan proposed by the bill, he rose to move a single amendment, which was to reduce the *additional* number of circuit judges to be provided for by the bill to *two*, so that there should be (with the present one in the Western States) *three* circuit judges in that section of the Union.

This motion was supported by Mr. VAN BUREN, and was opposed by Messrs. TALBOT and HOMER, of Maine; when

The question was taken on the amendment, by yeas and nays, and decided in the *affirmative*, as follows:

YEAS.—Messrs. Barbour, Barton, Bell, Branch, Chandler, Clayton, Cobb, D'Wolf, Eaton, Edwards, Elliott, Findlay, Hayne, King of Ala., King of New York, Knight, Lanman, Lloyd of Mass., McIlvaine, Macon, Mills, Parrott, Seymour, Smith, Taylor, Tazewell, Van Buren, and Van Dyke—28.

NAYS.—Messrs. Benton, Boulogny, Brown, Dickerson, Gaillard, Holmes of Maine, Holmes of Mississippi, Jackson, Johnson of Kentucky, Johnston of Louisiana, Kelly, McLean, Noble, Ruggles, Talbot, Thomas, and Williams—17.

The bill was then recommitted to the Judiciary Committee, (for the arrangement of the circuits, &c.)

#### Statements of the Foreign Commerce of the United States.

The President communicated to the Senate the following letter from the Secretary of the Treasury:

TREASURY DEPARTMENT,  
16th February, 1825.

SIR: In conformity with the provisions of the act of the 10th February, 1820, entitled, "An act to provide for obtaining accurate statements of the Foreign Commerce of the United States," I have the honor to transmit, herewith, the following statements of the Commerce and Navigation of the United States during the year ending on the 30th day of September, 1824, viz:

1st. A. A general statement of the quantity and value of merchandise imported into the United States from the 1st October, 1823, to the 30th June, 1824.

1st. B. Do. do. from 1st July, to 30th Sept., 1824.

2d. A summary statement of the same.

3d. A general statement of the quantity and value of Domestic Articles exported.

4th. A general statement of the quantity and value of Foreign Articles exported.

5th and 6th. Summary statements of the value of Domestic and Foreign Articles exported.

7th. A general statement of the amount of American and Foreign Tonnage employed in the Foreign Trade of the United States.

8th. A general statistical view of the Commerce and Navigation of the United States.

9th. A statement of the Commerce and Navigation of each State and Territory.

From these statements, it appears that the imports during the year ending on the 30th September, 1824, have amounted to \$80,549,007, of which amount \$75,265,064 were imported in American

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*Equestrian Portrait of Washington.*

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vessels, and \$5,288,958, in foreign vessels; that the exports have, during the same period, amounted to \$75,986,657, of which, \$50,649,500 were domestic, and \$25,337,157 were foreign articles; that, of the domestic articles, \$48,444,619 were exported in American vessels, and \$7,204,881 in foreign vessels; and of the foreign articles, \$23,967,087 were exported in American vessels, and \$1,370,070 in foreign vessels; that 850,038 tons of American shipping entered, and 919,278 cleared from the ports of the United States; and that 102,367 tons of foreign shipping entered, and 102,552 cleared from the ports of the United States during the same period.

I have the honor to be, sir, with great respect,  
your obedient servant, Wm. H. CRAWFORD.

*Hon. President of the Senate pro tem.*

The letter was read, and

On motion of Mr. LLOYD, of Mass., it was ordered, that 1,000 copies thereof, with the documents accompanying it, be printed for the use of the Senate.

After some other business, \*  
The Senate adjourned.

FRIDAY, February 18.

*Public Land and Slavery.*

Mr. KING, of New York, rose and said, in offering the resolution he was about to submit, though it was a subject of great national importance, he did not desire to debate it, nor did he offer it with a view to the present consideration. He submitted it as a matter for the future consideration of the Senate, and hoped it would be received, by all parts of the House, as one entitled to its serious attention. He then laid on the table the following resolution:

*Resolved by the Senate of the United States of America,* That, as soon as the portion of the existing funded debt of the United States, for the payment of which the public land of the United States is pledged, shall have been paid off, then, and thenceforth, the whole of the public land of the United States, with the net proceeds of all future sales thereof, shall constitute and form a fund, which is hereby appropriated, and the faith of the United States is pledged, that the said fund shall be inviolably applied to aid the emancipation of such slaves, within any of the United States, and to aid the removal of such slaves, and the removal of such free persons of color, in any of the said States, as by the laws of the States, respectively, may be allowed to be emancipated, or removed, to any territory or country without the limits of the United States of America.

The resolution was read, and on motion of Mr. BENTON, ordered to be printed.

*Equestrian Portrait of Washington.*

The Senate next took up the bill making an appropriation of 6,000 dollars for the purchase of Mr. Rembrandt Peale's picture, (exhibited in the rotunda,) embracing an equestrian portrait of General Washington, and equestrian portraits of General Lafayette, General Hamilton, and other officers.

Mr. MILLS, chairman of the committee, stated

to the Senate the reasons which induced the committee to report the bill. Its object was to make a suitable appropriation for the purchase and preservation of the most correct and perfect likeness of Washington, the man who was so dear to his country. The committee had taken great pains to ascertain the correctness of the resemblance, and they were satisfied not only of that, but that the whole work was executed with great taste and skill. This opinion was not founded on their own critical powers, but on the judgment of those who were most competent to form an opinion. If it were desirable for Congress to possess any work of this character, this was the one of all others most desirable. It was not merely a portrait of Washington—it combined incidents of an historical character—was commemorative of an event of the utmost interest and importance during the Revolutionary war. It shadowed forth the alliance which existed between our country and France, by the representation of General Lafayette. Mr. M. repeated, that if it were desirable for Congress to possess any thing of this kind, no picture could be presented more worthy of the consideration of Congress. He explained the views of the committee, in fixing the sum to be appropriated at \$8,000, and remarked that the committee were of opinion that this picture was not second to any of Colonel Trumbull's, in its scenes and execution, for each of whose paintings \$8,000 had been appropriated.

Mr. HOLMES, of Maine, said that he should be pleased to know what was an adequate compensation for the work in question. The sum you propose to give, is equal to the annual salary of your Secretary of State, superior to that of your Chief Justice of the Supreme Court. He asked whether this work was a year's labor? He thought that the rule adopted by the committee would not have much weight with the Senate, as, in his opinion, in the purchase of Trumbull's paintings, they had been abominably taken in. Those paintings, which cost \$32,000, were not worth 82 cents. Mr. H. said he did not pretend to be a critic in painting, but he would say, that Trumbull's last painting, commemorative of the resignation of General Washington, was a piece of the most solemn daubing he ever saw. The event it was intended to commemorate was one of the most sublime incidents that ever took place in the country. But what do you see in the picture? Why, a man looking like a little ensign, with a roll of paper in his hand, like an old newspaper, appearing as if he was saying, "Here, take it—I don't want to give it up." He concluded with moving to strike out 6,000, and insert 4,000.

Mr. MILLS replied, and entered into a further explanation of the views of the committee in reporting this sum. He thought it not proper for any gentleman to speak of Col. Trumbull's paintings as the gentleman from Maine had done; much less so to criticize a work performed by a gentleman who had borne a conspicuous part in the events of those days.

Mr. CHANDLER called for a division of the question; and the question was first taken on striking out 6,000; which was carried in the affirmative—ayes 20, noes 14.

Mr. TALBOT said a few words, when Mr. HOLMES moved to fill the blank with 4,000 dollars.

Mr. HAYNE moved 5,000, and stated as a reason, that he was well satisfied that the artist would not take 4,000 dollars.

The question on inserting 5,000 was decided in the negative, by yeas and nays, as follows:

YEAS.—Messrs. Barbour, Benton, Bouigny, Cobb, Eaton, Findlay, Gaillard, Hayne, Holmes of Mississippi, Jackson, Johnson of Kentucky, Johnston of Louisiana, Kelly, Lowrie, Mills, Parrott, Seymour, Smith, Talbot, and Van Buren—20.

NAYS.—Messrs. Barton, Branch, Brown, Chandler, Clayton, D'Wolf, Dickerson, Edwards, Holmes of Maine, King of Alabama, King of New York, Knight, Lanman, McIlvaine, McLean, Macon, Ruggles, Taylor, Tazewell, Thomas, Van Dyke, and Williams—22.

Mr. HOLMES, of Maine, then moved to fill the blank with \$4,500, but, before the question on this sum was put,

The bill was, on motion of Mr. MILLS, ordered to be laid on the table.

The Senate adjourned to Monday.

TUESDAY, February 22.

#### *Massachusetts Claim for Militia Services.*

The following Message was received from the PRESIDENT OF THE UNITED STATES:

*To the Senate and House of Representatives of the United States:*

I transmit, herewith, a report from the Secretary of War, with a report to him from the Third Auditor, of the settlement, in the amount stated, of the claims of the State of Massachusetts, for services rendered by the militia of that State, in the late war, the payment of which has hitherto been prevented by causes which are well known to Congress. Having communicated my sentiments on this subject fully, in a message bearing date on the 23d of February, 1824, it is unnecessary to repeat in detail here, what I there advanced.

By recurring to that message, and to the documents referred to in it, it will be seen that the conduct of the Executive of that State, in refusing to place the militia thereof, at that difficult conjuncture, under the direction of the Executive of the United States, as it was bound to do, by a fair construction of the constitution, and as the other States did, is the great cause to which the difficulty adverted to is to be ascribed. It will also be seen, on a view of those documents, that the Executive of the State was warned at the time, if it persevered in the refusal, that the consequences which have followed would be inevitable: that the attitude assumed by the State formed a case which was not contemplated by the existing laws of the United States relating to militia services: that the payment of the claims of the State, for such services, could be provided for by Congress only, and by a special law for the purpose. Having made this communication, while acting in the Department of War, to the Governor of Massachusetts, with the sanction

and under the direction of my enlightened and virtuous predecessor, it would be improper, in any view which may be taken of the subject, for me to change the ground then assumed, to withdraw this great question from the consideration of Congress, and to act on it myself.

Had the Executive been in error, it is entitled to censure, making a just allowance for the motive which guided it. If its conduct was correct, the ground then assumed ought to be maintained by it. It belongs to Congress alone to terminate this distressing incident, on just principles, with a view to the highest interests of our Union.

From the view which I have taken of the subject, I am confirmed in the opinion that Congress should now decide on the claim, and allow to the State such portions thereof as are founded on the principles laid down in the former message. If those principles are correct, as on great consideration I am satisfied they are, it appears to me to be just in itself, and of high importance, that the sums which may be due, in conformity therewith, should no longer be withheld from the State.

JAMES MONROE.

Feb. 21, 1825.

#### *Portrait of Washington.*

The Senate, as in Committee of the Whole, resumed the consideration of the bill authorizing the purchase of the Equestrian Portrait of Washington, by Rembrandt Peale.

Mr. HOLMES, of Maine, moved to amend the bill by filling the blank with \$4,500; which was decided in the affirmative—ayes 20, noes 14.

On the question, "Shall this bill be engrossed for a third reading?" it was decided in the affirmative, by yeas and nays, as follows:

YEAS.—Messrs. Barton, Benton, Clayton, Eaton, Elliott, Findlay, Hayne, Holmes of Maine, Holmes of Mississippi, Jackson, Johnson of Kentucky, Johnston of Louisiana, Kelly, Lloyd of Massachusetts, Lowrie, Mills, Parrott, Ruggles, Seymour, Smith, and Van Buren—21.

NAYS.—Messrs. Bell, Bouigny, Branch, Chandler, Cobb, D'Wolf, Dickerson, Edwards, King of Alabama, King of New York, Lanman, McIlvaine, McLean, Macon, Noble, Palmer, Taylor, Tazewell, Thomas, and Williams—20.

#### *Indian Tribes.*

On motion of Mr. BENTON, the Senate resumed, as in Committee of the Whole, the bill for the preservation and civilization of the Indian tribes within the United States.

Mr. ELLIOTT, of Georgia, rose, and, as a member of the Committee on Indian Affairs, asked the attention of the Senate to a few remarks which he proposed to make, in explanation and support of the objects of this bill. The measures proposed in this bill, said Mr. E., have, for their object, the preservation of the Indian tribes within the United States, and the improvement of their condition; as well as the advancement of the wealth and power of the Union. The attainment of objects so interesting both to the philanthropist and the statesman, justified a special message from the President of the United States, and can hardly fail to secure the

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grave attention of this body. So long as the Indian tribes within our settlements were strong enough to wage war upon the States, and to pursue their trade of blood with the tomahawk and scalping knife, it was neither the policy nor the duty of the Federal Government to consult their comfort, or to devise means for their preservation. The contest, then, was for the existence of our infant settlements, and for the attainment of that power by which a civilized and Christian people might safely occupy this promised land of civil and religious liberty. It was then to be regarded as a struggle for *supremacy*, between savages and civilized men, between infidels and Christians. But now, sir, when, by successive wars, and the more fatal operation of other causes, hereafter to be noticed, their power has departed from them, and they are reduced to comparative insignificance, it well becomes the magnanimity of a humane and generous Government, to seek out the causes of their continued deterioration, and, as far as practicable, to arrest its progress, by the application of the most appropriate remedies. To any one who has carefully attended to the history of the tribes within the old States, it must be apparent, that their uniform decline results from causes growing out of their location. So true is this position, that, while you can scarcely point to a nation of Indians wasting away, either numerically or physically, in *their native wilderness*, I know of no tribes within the States surrounded by a white population, who have not declined in both these respects, and who are not in manifest danger of extinction. What, sir, has become of the immense hordes of these people, who once occupied the soil of the older States? In New England, where numerous and warlike tribes once so fiercely contended for supremacy with our forefathers, but 2,500 of their descendants now remain! And these are mixed with negro blood: *dispirited and degraded!* Of the powerful league of the Six Nations, so long the scourge and terror of New York, only about 5,000 souls survived! While in Jersey, Pennsylvania, Delaware, and Maryland, they are either entirely extinct, or their numbers are so reduced as to have escaped the notice of the Department. In Virginia, Mr. Jefferson informs us, that there were in 1607, between "the sea coast and the mountains, and from the Potomac to the most Southern waters of James River, upwards of forty tribes of Indians,"—now there are but forty-seven individuals within the whole State! From North Carolina none are returned—and only four hundred and fifty from South Carolina! While in Georgia, where, thirty years since, there were not less than thirty thousand souls, within her present limits there are not now more than half that number. That many of these people have removed, and others perished by the sword in the frequent wars which occurred in the progress of our settlements in all these States, I am free to admit. But where are the hundreds of thousands, with their descendants,

who neither removed nor were thus destroyed? Sir, like a promontory of sand, exposed to the ceaseless encroachments of the ocean, they have been gradually wasting away before the current of the white population, which set in upon them from every quarter: and unless speedily removed by the provisions of this bill, beyond the influence of this cause, a remnant will not long be found, to point you to the graves of their ancestors, or to relate the sad story of their misfortunes. From this view of the subject, sir, I am brought to the conclusion, that two independent communities of people, differing in color, language, habits, and interests, cannot long subsist together—but that the more intelligent and powerful will always destroy the other. This, it must be confessed, is a sombre picture of human nature—but it is a sketch from real life; and the statesman will legislate for man *as he is*, and not as he *ought to be*. Now, communities *not independent* of each other, may differ in most of these respects, and yet not only subsist together, but, to a certain extent, increase and better their condition. Some of the South American Indians, although conquered and reduced to slavery by the Spaniards, were not destroyed. Their tribes are still extant; and, having commingled their blood with that of their conquerors, they are at this time an improved and powerful people. The African slaves, too, in the United States, are a distinct and separate people, but they rapidly increase, and are daily improving in condition. In these instances, the *mutual dependence* which exists, creates, in some sort, a community of interests. But, two communities of people, wholly independent of each other, and differing essentially in character and habits, must find their feelings and interests in perpetual collision. To confine such discordant materials, therefore, within the limits of the same State, cannot fail to engender endless contentions. And these, as in all other controversies, where physical power is made the arbiter of right, must ever result in the discomfiture of the weaker party; who, at length, dispirited and degraded under a sense of comparative weakness, and increasing wants, become idle and vicious, seeking in the bottle that gratification which they once enjoyed in the chase—and this degradation, and these habits, lay the foundation of their subsequent deterioration.

And, sir, if it be so difficult to preserve the Indian population within the States, from gradual but certain extinction, owing to the operation of causes inseparable from their location, how can we hope to promote either their moral or intellectual improvement, under such circumstances? Confidence in the sincerity and good intentions of those who essay to teach and improve us, is essential to success in the undertaking. But how can confidence exist amidst the daily irritations which grow out of the unhappy situation of these people? Are they yet in the hunter state? Their sustenance, then, depends on the quantity of game that



may be found within their limits. But this is daily increasing, by the encroachments of the whites, who penetrate their forests, and kill off the animals on which they subsist. Have they advanced to the condition of herdsmen? Their stock pass the boundaries of their territory; they are found to trespass upon the property of the whites, and they are destroyed.

Nor, sir, is this all; new acquisitions of territory are repeatedly urged upon them, and, savage as they are, they are not so devoid of common sense, as not to argue from the past to the future, and to anticipate the fate which awaits them, in the traditions of the powerful tribes who once commanded the banks of the Potomac and Delaware, and *whose names alone survive!* Under the pressure of such circumstances, it is idle to look for any solid or extended improvement in the Indian population within the States. A few of them, of mixed blood, may acquire some knowledge, and more property, but the great mass of this population cannot be expected to escape the causes of decline and degradation which have heretofore produced such uniform results. Under this impression, and with a view to sustain and improve the Indians now within the States, this bill was reported. It proposes to accomplish these benevolent objects by the purchase of a tract of country lying between the Missouri and Arkansas Rivers, as a *permanent possession* for these people. This tract is said by Mr. Storrs, who has explored it, to be very fertile, well watered, and abounding in game. But I will give you his own language, from a letter lately received by the Chairman of the Committee on Indian Affairs. In reference to the plan of colonizing the Indians, he says:

"Nature could hardly have formed a country more admirably fitted to such a purpose, than that which lies between us and the Arkansas River. It is among the most beautiful and fertile tracts of country I ever saw. Streams lined with timber intersect and beautify it in every direction. There are delightful landscapes, over which Flora has scattered her beauties with a wanton hand; and upon whose bosom innumerable wild animals display their amazing numbers. The spring clothes this solitude with its richest scenery, and affords a combination which cannot fail to please the eye and delight the imagination.

"If a few remnants of our tribes were settled here, embracing, if possible, the Osages and Kansas, and their prospect should become flattering, others would naturally join them, and form similar establishments; and, in the course of a few years, we should witness the gratifying spectacle of an organized government of industrious habits, and peaceful villages, surrounded with smiling fields and domestic herds. As I passed through that delightful region, I could not help regretting that it should be a waste of Nature; and felt a secret assurance that, at some future period, flocks would feed upon its abundant herbage, and a numerous

population would derive support from its fertility. It is a part of the country which will not answer our purposes of social intercourse and compact settlements. But, for the Indians, hardly any country could afford greater advantages than the tract adjoining the Kansas River, the Osage, the Neodio, the Verdigrisee, and, perhaps, the Arkansas, below where our route to Mexico crosses it. They could, from those places, procure salt from the salt plains of Arkansas; and during the incipient state of their progress, before their harvest could be equal to their support, the game would afford them an abundant means of support."

Such is the country proposed to be assigned to the Indians as their future home. It will be subdivided into surveys of sufficient extent to meet the exigencies of every tribe; and to each will be assigned a separate location. The whole to form a colony of red men, under the protection and guardianship of the Federal Government. From this territory, all white men will be rigidly excluded, except missionaries, teachers, and artisans, now engaged in their instruction and improvement, or such as may hereafter become necessary for that purpose; and these will be removed and settled with them. In this situation, all the wants of such a people will be provided for. No sudden transition from the hunter to the agricultural condition, will be expected by practical men. Such a change must be the work of time, and can be realized only in the descendants of those who shall be removed. These will be sedulously taught, both by precept and example, the value of the cultivation of the earth, *on permanent possessions*, and under a government of known laws. And, growing up under the influence of such instructions, with minds and morals improved, and relieved from the debasing associations of their former situation, every hope may be indulged of the most gratifying result. In the mean time, the adult population, upon whose habits and prejudices no very salutary effects could be expected, will find employment and profit in the chase, and in the management and increase of their domestic animals; for which purpose every section of land may have an outlet to the Rocky Mountains, and the privilege of hunting be purchased of the natives.

But here, sir, I will anticipate two objections. The first, that the congregation of so many different tribes of Indians on adjoining tracts, must necessarily lead to wars between them, more ruinous than the collisions they experience with the whites in their present situation. This would probably be the case, were they not sensible of the presence and power of the Federal Government, to adjust their difficulties, and to put down the wrong-doer. But it is proposed to have agents among them, men of known principle, well acquainted with the Indian character, respected by them, and anxious for their improvement. These men will act as umpires between the various tribes, and,

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by a timely adjustment of their quarrels, take away the occasion of wars. And the presence of the military posts, which will be stationed on the Western and Northern limits of this colony, cannot fail to give to such supervisory law, the efficiency which is anticipated. The second objection is, the danger to be apprehended by the adjoining States, from the power of the Indians thus collected. But, sir, it is to be recollected that these tribes have all experienced the power, and been subdued by the arms of the United States; and that the position which they will occupy, is one which will expose them to the whole Indian population to the North and West of them. Under such circumstances, every motive to be suggested, either by fear or interest, must impel them to the cultivation of peaceful habits, and a close alliance with the United States. This objection, then, is founded upon the supposition, that these Indians will act directly contrary to their obvious interests, and make war upon those whose power they *know* they cannot resist, and the preservation of which, they *feel* to be necessary to their own safety. Now, this is too violent a supposition to be the foundation of any objection which would require serious refutation. The contemplated removal and settlement of those Indians, therefore, will not endanger either *their peace or our safety*, while it promises to them an entire exemption from all the causes of deterioration, under which they now languish. That the civilization and moral improvement of these people must be the necessary consequence of their removal and settlement, as this bill contemplates, I am not prepared to say. But I do say, Mr. President, unless they are removed from their present situation, and that very shortly, too, there will be but few to require this experiment at your hands—an experiment which, although it may fail, I believe to be more full of hope and promise concerning the future prospects of this unfortunate race, than any which has been heretofore attempted.

Thus much I have felt it my duty to say, in reference to the deep interest I believe the Indians have in the proposed measures. But, I have said these measures would also increase the wealth and power of the Union. The removal of the Indians beyond the limits of the States, would leave us in possession of all the lands they now occupy; and these, from their situation and extent, must be very valuable. Almost all the Indian reservations have been of the best lands; and surrounded, as they are at this time, by a white population, and improved by roads, and other facilities of intercourse with the adjacent country, they would command comparatively a high price. But these lands form an aggregate of no less than seventy-seven millions five hundred thousand acres. Now deduct nine millions five hundred thousand acres, as lands belonging to Georgia, when the Indian title shall have been extinguished; and one hundred and forty-four

thousand in possession of the Cahawba Indians, but which, if surrendered, would belong to South Carolina, and you will have sixty-seven millions eight hundred and fifty-six thousand acres subject to the disposition of the United States? Suppose this immense tract sold at only two dollars per acre, a fund would be created of one hundred and thirty-five millions seven hundred and twelve thousand dollars! Which, after reimbursing the treasury for all expenses incurred in carrying into effect the provisions of this bill, would not only be adequate to the extinction of the national debt, but leave an immense amount at the future disposal of the Government.

But, sir, the wealth and power of the Union will be still more advanced by the greater compactness of the population, and the increased cultivation of the soil of the States, which would be ensured under the operation of the system. If the wealth of a nation depends upon the quantity of its surplus productions, whatever has a tendency to increase these productions, must operate favorably upon the resources of the community. By the plan proposed, an immense tract of land, now useless, would be brought into cultivation, some of which will produce the most valuable staples, either for use or exportation. Within the States of Georgia, Alabama, Mississippi, and Tennessee, there are upwards of 88,000,000 of acres of valuable land, that would be redeemed and brought into cultivation! Most of this soil would grow cotton, and swell the valuable export of these States to an astonishing amount. But, sir, what shall I say of the value of the population which this measure would ensure to these States? This Senate must be well aware that it is not less the policy of the Federal Government than it is the interest of these States to afford every facility to the rapid increase of their efficient population. Situated at the most exposed point of the Union, as two of these States are, with an extensive sea-coast, incapable, from the nature of its soil, of sustaining but a very sparse population, they must rely, for their defence, principally, on the dense population of the interior. Florida, too, with her immense maritime frontier, will look chiefly to Georgia and Alabama for aid in time of war. And, as New Orleans was saved in the last war by the power of the adjoining States, so Florida, and the sea-coast of Georgia, and Alabama, can be successfully defended against future invasion only by the timely augmentation of their physical power. It becomes, then, an object of cardinal interest with the Federal Government, upon whom devolves the high duty of national defence, that every portion of these States should be filled up with an effective population; and blind, indeed, is that policy, which would continue to appropriate so many millions of acres of land, *thus situated*, to the unproductive uses of Indian occupancy, regardless alike of the wealth of the nation and of her means of defence! But,

sir, independent of the general policy which so strongly recommends this measure, its tendency to fulfil the just expectations of Georgia, in reference to the cession of 1802, should ensure to it the most favorable reception. Twenty-three years have nearly elapsed, since the Union contracted, for a valuable consideration, to extinguish, for the use of Georgia, the Indian title to all the land within her limits. Knowing the influence and power of the Federal Government, Georgia could not have anticipated the delays which have occurred, nor foreseen the obstacles which they would have interposed to the accomplishment of her expectations. And, although fully sensible of the pernicious effects of this procrastination, in the abridgment of her wealth and power, such has been her attachment to the Union, and respect for its Government, that she has hitherto repressed the full expression of disappointment, in the hope that every new appeal to the justice of the United States would result in the performance of their stipulations. Formerly, her claims were postponed for the convenience of the national treasury; and, latterly, by representations of the difficulties of compliance. But now, sir, a plan is offered for your acceptance, free from all these embarrassments. It is proposed to exchange lands beyond the Mississippi for those tracts held by Indians within the States. Should this plan succeed, it will enable the United States not only to discharge their obligations to Georgia, "*peaceably, and on reasonable terms,*" but to confer a lasting benefit on the Indians thus removed, by giving them a *permanent home*, for their present *precarious possessions*. In his message on this subject, the President informs Congress; that a treaty with the Creek Indians is now negotiating, and "with a reasonable prospect of success." Although no serious difficulties may now present themselves to the acquisition of these lands, yet, every day's delay is calculated to augment such as do exist. The attainment of property by a few individuals of mixed blood, (some of whom own cotton plantations, worked by African slaves,) has given to a small minority a controlling influence in the councils of the nation. These men become, annually, richer and more powerful, while the great body of the nation are impoverished and degraded. Without game to subsist on, and unskilled in the arts of civilized life, they are in fact the menials of this aristocracy, who employ and support them; and who, fully sensible of all the advantages resulting to their avarice from the possession of this power and influence, will not easily be persuaded to use either in support of a policy which, however it may be calculated to subserve the interests of the mass of the red population, may ultimately deprive them of the station and emoluments they now enjoy. Most of the difficulties which have been experienced in treating with these Indians, have been occasioned by the influence and intrigues of men of this description, who, having no

interests in common with the nation, could not be expected to sympathize with them. The mass of the red population have long been inclined to such a removal and settlement as this bill proposes; and, should the treaty with the Creeks succeed, the Indians will be removed, *at their own request*, beyond the Mississippi, and settled upon lands to be given them as a *permanent possession*, in exchange for those they shall have surrendered. In fact, a disposition to such a removal and settlement as this bill contemplates, is manifesting itself from various quarters; and many applications for this purpose, have been already made to the War Department, by the more intelligent and reflecting among the Indians of different tribes. Nay, sir, delegations from ten or twelve tribes have actually arrived in this city, within the two last days, charged by the nations to whom they belong, with the expressions of their gratitude for the propositions contained in this bill, and of their readiness to comply with its requirements. Nothing, then, is wanting to the accomplishment of this important object, but the sanction of Congress. About 180,000 souls of this unfortunate race now await their destiny at your hands! Pass this bill, sir, and you elevate their character, and impart new hopes to their future prospects. Reject it, and you set your seal to their degradation. And, although their fate may be delayed, I consider it as inevitable as the march of time. Every motive, therefore, of humanity, of policy, and of interest, urges you to the sanction of this bill. In such a cause, and under such circumstances, I am not permitted to doubt the decision of the Senate.

The bill was then ordered to be engrossed for a third reading.

After the consideration of Executive business, The Senate adjourned.

WEDNESDAY, February 23.

#### *Civilization of Indians.*

The engrossed bill for the preservation and civilization of the Indian tribes within the United States, was read a third time, *passed*, and sent to the House for concurrence.

#### *Portrait of Washington.*

The engrossed bill authorizing the purchase of the equestrian portrait of Washington by Rembrandt Peale, was read a third time.

On the question "Shall this bill pass?"

Some discussion ensued; Messrs. KING, of Alabama, MACON, LANMAN, and NOBLE, opposing the appropriation, which was supported by Messrs. MILLS and LOWRIE; it was finally decided in the affirmative by Yeas and Nays, as follows:

YEAS.—Messrs. Barton, Barbour, Benton, Bouigny, Clayton, Eaton, Elliott, Findlay, Hayne, Holmes of Maine, Holmes of Mississippi, Jackson, Johnson of Kentucky, Kelly, Lloyd of Massachusetts, Lowrie, Mills, Parrott, Ruggles, Seymour, Smith, Talbot, Van Buren—23.

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NAYS.—Messrs. Branch, Brown, Chandler, Cobb, D'Wolf, Edwards, King of Alabama, King of New York, Knight, Lanman, McIlvaine, McLean, Macon, Noble Palmer, Taylor, Tazewell, Williams—18.

So the bill passed, and was sent to the House for concurrence.

*Cumberland Road.*

The Senate took up, as in Committee of the Whole, (Mr. BARBOUR in the chair,) the bill appropriating 150,000 dollars for the extension of the Cumberland road from the Ohio to the Muskingum, at Zanesville—the amount of the appropriation to be reimbursed to the Treasury out of the fund reserved for laying out and making roads under the direction of Congress, by the several acts passed for the admission of the States of Ohio, Indiana, Illinois, and Missouri into the Union—

Mr. BROWN, of Ohio, (Chairman of the Committee on Roads and Canals,) said this was not at all a new subject to the Senate, but it was one of great interest, not only to all the States west of the Ohio, but to some of the Eastern States likewise. He therefore asked the favorable attention of the Senate to it. He would not deny that the State he represented would be one of the first to feel the benefit of the appropriation, but it would, he hoped, be admitted, that the State of Ohio had some reason to ask this of the General Government, and it ought to be conceded to them. The Legislature of that State had, he said, passed laws, during the last session, for opening a navigable canal between the waters of Lake Erie and the Ohio, which, when completed, could not fail of being of great service to the United States, in peace and war, and would likewise enhance the property of the United States in that State, and in those further westward. If, therefore, from such considerations, the United States would make a beginning this year, for the extension of the road beyond the Ohio River, which now connects the valley of the Ohio with that of the Potomac, they would find their own interest in a liberal policy in this regard, which would be of material service to the Western States.

Mr. COBB said, that, although he would not pretend that he should be able to throw any new lights on the great principles involved in the bill under consideration, yet he could not consent to its passage without some degree of investigation, and therefore he solicited the attention of the Senate for a few minutes. At the present period it could not be expected, that there are many persons who could contribute additional lights upon a question which had engaged the attention, and elicited the investigation of the ablest statesmen in the nation. Yet he looked to its final decision with very great anxiety. He thought the Senate would concur in believing with him, that those principles had not been entirely settled when they looked to the history of this system of internal improvements. There had been no instance

within his recollection, when the claim for the power of adopting it had been advanced, in which it was not denied by some one of the departments of the Government. At the very first session of the Congress of which he had first the honor of being a member, (which was at the commencement of the present administration,) the question was brought before the House of Representatives. At that time a solemn vote was taken in that body, declaring that Congress had no power to construct roads and canals. This vote was predicated on the report of a committee appointed on so much of the President's Message as related to the subject, and in which message the power was expressly denied to Congress. How far the opinions of the Executive, since that period, had undergone a change, in relation to the question, was as well known to the Senate as to himself; he should not stop to point out the change, if any, inasmuch as he adverted to the Message, merely to show that the question had not been settled. He repeated, that he felt great anxiety as to the result of the vote now about to be taken in the Senate, inasmuch as he believed it involved the great question, whether this Government was to drop all its federative characteristics, and was about to become, as predicted by the great Virginia Prophet,\* a splendid national consolidated government, reared upon the ruins of the sovereignty of the people and the States?

In using such expressions, Mr. C. said, he was aware that he was harping upon an old string, whose simple notes were extremely disagreeable to the ears of certain modern politicians. The subject had become unfashionable. But, from the earliest period at which he had seriously thought on political subjects, he had been taught to reverence the principles he was attempting to advocate, and the Senate would therefore pardon the terms he had used, if there was any thing offensive in them. He had learned from the State in which he was born, (and of which you, sir, are a Representative,)† that there is safety in sometimes recurring to fundamental principles.

Much might be said, he thought, as to the expediency of the measure under consideration. It might, with great propriety, be inquired, why Congress was called on to extend the Cumberland Road at this time, even admitting they had the power? Why the Western States were now better entitled to have such a beneficial boon extended to them, than the other States of the Union? What was said when the Cumberland Road was first undertaken? The sole object was to form a connection, by a permanent and durable road across the mountains, between the Atlantic coast and the navigable waters of the West. This was effected by constructing the road from Cumberland to Wheeling. At that time, did any person dream

\* Patrick Henry.

† Mr. Barbour, of Virginia, was in the chair when Mr. Cobb delivered his remarks.

that so soon, if at all, Congress was to be called on to extend it from Wheeling to the Mississippi? For that, he understood, was the object avowed by the advocates of the bill. If the Western States generally, could have no claim to such a beneficial work, much less had the State of Ohio, considered singly. The fund out of which the expense of making the road is to be paid, so far as any portion of it was derivable from that State, had been long since expended. The reservation of the percentage on the sales of the public lands for roads, in the State of Ohio, had been sunk in constructing the Cumberland Road, to which it was, by law, applied. Nay, the expense of the road had greatly exceeded the reservation by many thousand dollars. He was sure the fact would not be denied.

As the question involved all the principles relating to the powers of the Federal Government on the subject of internal improvements, he would here lay down a proposition, which he thought almost self-evident. It had been contended, that the United States were bound to construct this road, by compact made with several of the Western States at the time of their admission into the Union. Admitting that such a compact could be produced, and that it contained an express stipulation to that effect, it would not, in his opinion, change the proposition. It is, that Congress have no powers, and can have none, but such as are derived from the Constitution of the United States. It matters not with whom, whether a State or an individual, the Federal Government may have made such a compact, it could add nothing to the powers of that Government, unless contained in the constitution itself. This was sufficiently evident from the very first section of the first article of that instrument, which declares that the Legislative powers "therein granted" shall be vested, &c. Other parts of the instrument, especially some of the amendments, show the truth of the proposition beyond doubt. He would not now turn to the clauses, as they were, doubtless, familiar to the memory of every member present.

Almost every person who had expressed an opinion on the subject, so far as had come under his observation, admitted that this Government was one of limited powers—limited not alone by the prohibitions of power to be found in the constitution, but by an absence or want of a grant of power therein. It would seem that this was true, as well from the parties by whom, as from the manner in which, the Federal Government was first constructed. It was, perhaps, unfortunate, that we do not more frequently recur to the circumstances under which the constitution was framed, when we are about to establish the principles from which is to be derived the true rule for the construction of an instrument of such vast importance.

By what parties, and for what object the instrument was formed, would better appear

from a document which he was about to read than from any thing he could say. It was one of the celebrated resolutions of the Kentucky Legislature,\* containing, as was at one time said, the foundation of Republican principles. He used the word Republican as a party designation, inasmuch as he now had allusion to the principles professed by the party so named, at the period of the adoption of the resolution, and for a long time thereafter. It is as follows:

"Resolved, That the several States, comprising the United States of America, are not united on the principle of unlimited submission to their General Government; but that, by compact, under the style and title of a 'Constitution for the United States,' and of amendments thereto, they constitute a General Government for special purposes, delegating to that Government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government—and that, whenever the General Government assumes undelegated powers, its acts are unauthorized, void, and of no force. That, to this compact, each State acceded as a State, and is an integral party, its co-States forming, as to itself, the other party. That the Government, created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the constitution, the measure of its powers. But that, as in all other cases of compact among parties, having no common judge, each party has an equal right to judge for itself, as well of infractions, as of the measure of redress."

In this resolution will be found the anatomy of the Federal Government; the principles on which it was created; and, if so, it will not be a difficult matter to determine in what manner the parties to the constitution, those by whom the Federal Government was framed and adopted, intended this instrument of creation should be construed and expounded. If the doctrines contained in that resolution are true, then it is evident that the compact, thus denominated the Federal Constitution, was one entered into between sovereign States, wherein each relinquished a portion of its sovereignty. Common sense would teach us that such a compact should be so strictly expounded, as to take from the grantors no more of their sovereignty than is absolutely necessary to effect the great objects of the compact. At this very point, then, (said Mr. C.) I start in establishing that strict rule, by which I conceive the constitution should be expounded. If I should be so fortunate as to support this strict rule, by other circumstances, equally strong and forcible, it may, with propriety, be contended, that the power to construct roads and canals is nowhere to be found in the constitution. Should I, however,

\* These resolutions are said to be, and no doubt are, the production of Mr. Jefferson, and contain his opinion on the subjects embraced in them.

† Resolutions of a similar character were about the same period (1798), adopted by the Legislature of Virginia, in support of which "Madison's report" was founded, at the session thereafter. At a later period, the Legislatures of Pennsylvania and Ohio adopted resolutions containing like principles.

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fail in showing this to be the true rule, and the liberal one, more recently established, should be adopted in its place, I shall not be able to deny that such power, or any other not expressly prohibited, is conferred.

The rule for which I contend derives strong support from many other circumstances, as before stated. It is supported from the first section of the first article of the constitution, which I have already noticed. It is supported by the adoption of the amendments of the constitution, all inserted for "greater caution." It is supported by the manner in which amendments are directed to be made. When adopted by Congress, they are to be ratified by that body, in each State, which represents its sovereignty; or the same representatives of sovereignty may request a call of a convention for proposing amendments. It is supported, also, by the declarations and commentaries of the early expositors of the instruments. I venture to throw the gauntlet, and defy any one to point to any contemporaneous expositor, of approved reputation, who has decided in favor of those broad and liberal principles of construction contended for by the advocates of the bill.

Mr. RUGGLES, of Ohio, followed Mr. COBB. He said the object of the bill before the Senate, was to appropriate one hundred and fifty thousand dollars for the continuation of the Cumberland road from Wheeling in Virginia, to Zanesville, on the Muskingum River. At some future time, said Mr. R., when the resources of the country will justify it, there can be no doubt, but Congress will make appropriations to continue the same road to the Mississippi River, at some point near to, or opposite St. Louis. There is no subject of Internal Improvement, that presents as strong claims upon the consideration of Congress as this. It is one to which the attention of the Government has been long, and ardently directed. This great work was commenced in 1806, at Cumberland, in Maryland, and has received the patronage and support of three successive administrations, and is now admitted, by all sound politicians, who look to the future prosperity and perpetuity of this Union, as an object of the first consequence. In discussing this subject, Mr. R. said, we ought to discard all local and personal considerations, and treat of it solely in a national point of view. If mere local and personal considerations are to govern the deliberations of Congress, the great and permanent interests of the nation would be disregarded, the most valuable improvements remain untouched, and the great principles of legislation settle down into selfishness, and a contest for sectional benefits. Higher and nobler views ought to govern this Senate.

Mr. R. said he would not go into the discussion of the constitutional question, whether Congress had a right to appropriate money for internal improvements, to make roads and canals. That question he had considered as long settled by both Houses of Congress after the most able and solemn arguments. The

gentleman from Georgia, (Mr. COBB,) has, with great ability, given us his sentiments on that point, attempting to show that Congress has not the power to appropriate money to make roads and canals, but he had entirely failed to convince him of the correctness of his positions. This system had been in operation for twenty years; the country had acquiesced in it; the soundest heads and ablest talents of the nation had decided in its favor; the venerable patriot Jefferson had given to it the sanction of his great name and influence; he may be justly styled the father and patron of the Cumberland road. The agitation of the constitutional question at every session would result in no good, but might be productive of great evil to the nation; there is a point on all questions, beyond which we ought not to go, where discussion and opposition must end. Mr. R. said he hoped we had arrived to that point, and that the only question now would be, How can we best improve the condition of the country, by a wise application of its resources?

Whatever might be the opinion of gentlemen on the constitutional question, on the right and power of Congress to appropriate the funds of the nation to make roads and canals in the United States, generally, there could be but one opinion in relation to the present measure. This question stands on distinct and different grounds altogether. It arises out of a solemn and deliberate contract between the General Government, and the States north-west of the Ohio River, by which the former are bound to execute this work. Congress has received, and is still continuing to receive, a valuable consideration: an equivalent for the money now proposed to be expended. If it fails to fulfil its engagements, it may justly be accused of violating its contract with the North-western States. What are the facts in relation to this subject? When those States were admitted into the Union, the Congress of the United States, by their several acts, authorizing the people to form for themselves a constitution and State government, agreed, that the States would not tax the public lands for five years after they had been sold, that five per cent. arising out of the net proceeds of the sale of those lands, should be appropriated for the purpose of making roads; three per cent. of which was to be laid out within the States by their respective legislatures, and two per cent. by the authority of Congress, in making a road leading to those States. Let us examine more particularly, said Mr. R., into the real state of the question, and inquire what has been the practice of the General Government for twenty years past.

Ohio was the first State that was admitted into the Union upon this principle. This took place in 1803. When the two per cent. which had been reserved for making a road leading to that State, had accumulated so as to justify an expenditure, Congress passed a law in 1806, authorizing commissioners to be appointed to survey and lay out a road from Cumberland, in

Maryland, to the State of Ohio. After the survey and location were completed, annual appropriations were made by Congress for constructing the road, until it was finally completed from Cumberland to Wheeling, on the Ohio River, a distance of one hundred and thirty-five miles. This road lies entirely within the States of Maryland, Pennsylvania, and Virginia. Not one rod is within any of the new States. The contract with the State of Ohio is fulfilled; the road has been made to the boundary of that State; the two per cent. that has arisen, and will hereafter arise, has all been expended. Ohio, therefore, has no further claim upon Congress for any portion of the two per cent. which may be produced by the future sales of lands in that State.

It is but justice to admit, said Mr. R., that a greater sum of money has been expended in making the Cumberland road to the Ohio River, than the two per cent. would amount to in the State of Ohio. This excess must be considered as a direct appropriation from the treasury, for the accomplishment of a great national object, in which the whole Western country had a direct and beneficial interest. All the States bordering upon the Mississippi, as well as the Ohio River, derive important advantages from the execution of this work. It is also equally important to the Atlantic States, being the usual channel of intercourse, both commercial and personal, between the East and the West. It serves as a common bond of union to connect various and distant portions of the country together.

Mr. R. said he would now submit an estimate to the Senate, of the expense of making this road from Wheeling to the Mississippi River. This estimate is furnished by Mr. Shriver, who was one of the commissioners appointed in 1820, to survey and locate it, and is well acquainted with the whole ground over which it passes. The utmost reliance may be placed upon this statement, from the fact of his having been employed by the Government for superintending the making of the Cumberland road, from its first commencement, until it was completed to the Ohio River; having, therefore, acquired as much practical information upon this subject, as any other man in this nation, Mr. Shriver thus estimates the expense of making the road. The whole distance is 500 miles. The first section, from Wheeling to Zanesville, is about 80 miles. The expense for making it, including bridges, and necessary side-walls, is estimated at \$450,000, which is a little more than \$5,500 per mile. The road to be made similar, in all respects, to that on this side of the Ohio River. It is to be remarked, that this section will be the most difficult and expensive, as the road passes through a very uneven country, the ravines being deep, and the hills bold and abrupt. The second section, from Zanesville to Dayton, a distance of about — miles, is estimated to cost \$550,000. The eastern part of this section, and more than one-half of it, can be made of broken

stone, like the former, and the remainder, or western part of this section, must be made of gravel, of which there is a great abundance, and of an excellent quality. This section of the road can be made much cheaper than the first, owing to its passing over a more level and even surface, and requiring less expense for bridges. The third section of the road, from Dayton to the Mississippi River, a distance of 220 miles; the expense of making it cannot be estimated as accurately as the two former sections. When this part of the road was surveyed by the commissioners, there was considerable snow on the ground, which prevented them from examining it as particularly as they could have wished, and ascertaining the quantity and kind of materials with which to make it. Mr. Shriver, however, states, that this section of the road can be made without paving it, and without stone bridges, for \$2,000 per mile, which will cost, from Dayton to Mississippi River, \$640,000. It is, however, believed that, when this section of the road becomes more settled and better known, that stone or gravel will be found in sufficient quantities to make the road, the whole distance, of a permanent and solid character. From the foregoing statements and remarks, it will appear that the whole expense of making the road from Wheeling to the Mississippi River, will amount to \$1,640,000. From the statement before exhibited, from the Commissioner of the Land Office, the two per cent. arising from the sales of land in the States of Indiana, Illinois, and Missouri, and applicable to this object, amounted to \$2,162,176, leaving a balance of \$522,176, in favor of the two per cent. fund. Mr. R. said, the flattering result to which he had arrived, was no visionary dream, no fanciful speculation—it is produced by the facts exhibited by the Commissioner of the Land Office, and by the estimates and calculations of another of your officers, who has been many years in your employment, and of great experience and accuracy. There can be but little doubt that time will test their perfect correctness. From so interesting and gratifying a view of this subject, can it be considered as asking too much of this Senate to pass the bill under consideration? It has passed the House of Representatives by a large majority—shall its progress be arrested here, the great object be defeated, and the hopes and wishes of millions of your fellow-citizens in the West, who are anxiously watching your deliberations on this subject, be disappointed and blasted? It is to be hoped that such will not be the result. The case presented is of the strongest character—one not only founded upon solemn contracts, but upon the great principles of justice, mingling in itself political considerations for the permanent union of these States, of the highest importance. Let, then, this great work go on and be completed; unite the East and the West by the strongest possible ties; let their citizens be no longer strangers, or be considered as having distinct and separate interests. Complete this road; the difficulties of personal and commer-

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cial intercourse will be broken down; distance will be annihilated; and the shores of the Mississippi will be brought within the neighborhood of your capital.

Mr. LLOYD, of Massachusetts, said, as frequent allusion had been made in the debate to the grant for the preservation of certain islands in Boston harbor, the object of which seemed not to be distinctly stated, although he was too much indisposed to fight a battle even once, willingly, yet, to fight it twice over, he would again explain what that grant was for. It was for the preservation of an island, which was in mid-channel, and served as a barrier or shelter to a very excellent roadstead at the entrance of the harbor, for vessels of war of the United States, and the channel of which was filling up by the wasting of the island, which formed also a commanding situation for a fortification in time of war, to secure it for which purpose, with the head land opposite, were among the objects of the grant, and they were important; but it was the apparent good will with which the appropriation was agreed to, which was, at the time, and continued to him to be, the most grateful part of it.

The question was then put on the indefinite postponement of the bill, and decided in the negative, as follows:

YEAS.—Messrs. Barbour, Bell, Branch, Chandler, Clayton, Cobb, Dickerson, Elliott, Hayne, Holmes of Maine, Holmes of Mississippi, King of Alabama, King of New York, Knight, Macon, Mills, Tazewell, Van Buren, Williams—19.

NAYS.—Messrs. Barton, Benton, Boulogny, Brown, D'Wolf, Eaton, Edwards, Findlay, Jackson, Johnson of Kentucky, Johnston of Louisiana, Kelly, Lanman, Lloyd of Massachusetts, Lowrie, McIlvaine, McLean, Noble, Palmer, Parrott, Ruggles, Seymour, Smith, Talbot, Thomas—25.

On motion of Mr. HOLMES, of Maine, (who wished time to examine more particularly the statements and calculations submitted by Mr. RUGGLES.)

The Senate adjourned.

THURSDAY, February 24.

Mr. NOBLE submitted the resolution of the General Assembly of Indiana, disapproving the amendment proposed by the State of Georgia to the Constitution of the United States, on the subject of the ingress of people of color into the several States of the Union; which was read.

#### *Delaware and Chesapeake Canal.*

The Senate next took up the bill authorizing a subscription on behalf of the United States, of 1,500 shares of the capital stock of the Delaware and Chesapeake Canal.

Mr. TAZEVELL moved the adoption of two additional sections to the bill, embracing provisions for authorizing a subscription, on behalf of the Government, of 400 shares of the capital

stock of the Dismal Swamp Canal Company, (which connects the waters of the Chesapeake with those of Albemarle Sound.)

Mr. TAZEVELL, in offering his amendment, made a few remarks to show the importance of the work which it was his wish to aid—the necessity of such aid to make it what it ought to be, &c. He drew a parallel between the two works to show their similarity and identity of purpose and effect—the first, opening an interior communication between the Delaware and Chesapeake waters—the other connecting the Chesapeake and the waters of North Carolina; and thus making an immense extension of the benefit which the Delaware Canal would effect. This is in part the substance only of his remarks—the speaker being indistinctly heard by the reporter.

Mr. Brown thought it was his duty to oppose this amendment, because the present was not, in his opinion, the proper time to urge it. The gentleman from Virginia (Mr. TAZEVELL) had professed himself opposed to the grand connection of the whole coast of the Atlantic by internal navigation, which struck his (Mr. B.'s) mind as a most magnificent and useful project, and one which was of the utmost importance to the nation—they would be sure to feel the benefits of it whether they were at peace or war—he declared he had not the least objection to assist the Canal Company of Virginia—he considered that Canal a most important link in the great chain; but to introduce it at this time would defeat the object which this bill contemplated, at least for the present year.

The Chesapeake and Delaware Company wanted the sum now asked for, to complete the canal which had already been begun. The first act incorporating this Company was passed in the year 1799; it had received the sanction of the different States through which it passed, and had attracted the attention of the most enlightened statesmen from the time of the adoption of the constitution. This chain was recommended by Mr. Gallatin, in his able report, which alone would be sufficient to immortalize his memory.

It was presumed by those who are well acquainted with the localities, and the course the canal has to pass, that this would be good stock—stock which the United States could realize when they thought it necessary to assist in the extension of further improvements, probably without any loss.

The question of the constitutionality of appropriating public money for these objects, had been, Mr. B. said, so thoroughly discussed by men so much more able than himself, that it was perfectly unnecessary for him to touch upon that topic—it would be sufficient to say, in answer to the objection made by the gentleman from Georgia, (Mr. COBB,) that, if this power was not granted, as was the opinion of Publius, in the "Federalist," that gentleman had signed bills for the appropriations for the Cumberland Road.



This bill, Mr. B. said, broke no ground—it claimed no sovereignty, nor trespassed on any domain. If there could be any objection, it would arise from the United States being placed in the attitude of corporators, subject to the law of the State. This was an objection which had long ago been got over in a case of much more importance to the United States—that was, the incorporation of the Bank of the United States. Therefore, there could be no objections to their becoming shareholders.

Mr. SMITH said, the State of Maryland had always taken a deep interest in this canal. It had not only granted a corporation, but had subscribed money towards its completion. Therefore, it seemed a duty on his part to say something on the present occasion. He was not one of those who concurred with the gentlemen from Virginia, (Mr. TAZEWELL,) in his views. Mr. S. said he had always been in favor of internal improvement, so far as it could be executed according to what he considered the true construction of the constitution, and he thought the present measure came within the true construction of it. It was the beginning of the great chain of internal intercourse from Cape Fear to Boston, and this canal being completed, would show that all the others were indispensably necessary, and would, at the proper time, be taken up.

The proposition of the gentleman was, he thought, worthy of great consideration; the canal alluded to by him, was highly important to this great chain, and ought to be perfected; he should, therefore, when it was brought forward at a proper time, give it his most cordial support.

Mr. S. said he understood that the sums subscribed by the States of Pennsylvania, Maryland, and Delaware, with that subscribed by individuals, would, with the appropriation now asked for from Congress, be sufficient to complete the work. As far as they had hitherto proceeded, the cost was within the estimate, and when this work was done, that alluded to by the gentleman from Virginia would be done also, and the communication from Cape Fear to the Delaware would be complete. The subscription had rapidly filled for forming the canal to unite the Delaware and Raritan, which was a most important measure in reference to a time of war; and, in time of peace, would save insurance and lessen the coasting trade, which was the only objection he had to it. The East River, Long Island Sound, &c., made almost an internal communication with Boston; and, if the canal were made, cutting off the dangerous navigation round Cape Cod, there would be, in some sort, an internal navigation from Cape Fear to Boston, and he thought the time would come when Pensacola would be connected by a canal.

Mr. VAN DYKE thought, from what the gentleman from Virginia had said, he might predict he was not opposed to the system of internal improvements and constructing canals: for

by his offering the proposition he had done, he seemed to say he had no scruples as to appropriating the public money for that purpose.

Considering him, therefore, as a friend to the present measure, Mr. V. D. said he would ask him to consider how much the amendment he had proposed would impede it, by introducing a proposition new in its character, which had never been under the consideration of Congress; which had never been referred to any committee, which they had no official information to act upon, and which would, therefore, be the very means of defeating the object of the bill. Under this view, therefore, Mr. V. D. hoped he would withdraw his amendment. In opposing the amendment, Mr. V. D. said he acted in conformity with the course that had been pursued in the House—placing each proposition for appropriating money on its own specific character and grounds. Instance the bill proposed to subscribe for a certain number of shares for the completion of a highly useful and necessary work; it was not proposed to give the money, but to subscribe for a portion of the stock, to enable the company to go on with their operations.

It was a subject, he said, that had been before Congress on many occasions, and had been approved of by the Senate many years ago. It had been discussed, and thoroughly discussed, in the House of Representatives, and that House was willing, if the Senate would concur, to take so many shares. Mr. V. D. deprecated the idea of bringing forward another and a new proposition to attach to it, proceeding on an untrodden ground, to embarrass the Legislature—a proposition for an object which they may have heard of individually, but which had not been the subject of inquiry, and which they had now neither time nor opportunity to investigate.

Mr. LOWME, of Pennsylvania, thought this amendment would as effectually defeat the object of the bill, as a majority of noes on the original proposition. Viewing, as he did, with a favorable eye, the project advocated by the gentleman from Virginia, he could not agree with him in all the particulars of the parallel he had drawn between the two projects. For many years the subject of the Chesapeake and Delaware Canal has been before Congress, and the attention of the Senate had been particularly drawn to it—for the last 6 years they had reported in its favor—statements had been submitted, going into detail, and the bill had been discussed in, and had passed through, the House of Representatives; and now a new project was offered; if it had been proposed at the early part of the session, it would have followed the usual course, would have been submitted to a committee, and would have been consequently acted on; but if it were now urged on, crowded as they were by business, they must vote on trust; he therefore hoped the amendment would not prevail. If the project had

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all the merit its friends ascribed to it, it could not fail of succeeding at a future period.

Mr. BRANCH, of North Carolina, said the proposition of the gentleman from Virginia was of more importance to the section of country he had the honor to represent, than any that had ever been brought before Congress; it was connected with the destinies, not only of the east, but the west part of the State. The Senate would recollect, that the Roanoke River had as much fertile land in its vicinity as any part of the Atlantic States. That river, he said, takes its rise in the western part of Virginia, waters the western parts of North Carolina and Virginia, and at this moment more produce is raised in the vicinity of this river, proportionably, than in any of the Atlantic States. Four years ago, a company was chartered by the Legislature of North Carolina, to improve the navigation of the Roanoke River—its funds had all been expended, and the navigation was now nearly completed; the canal round the principal falls of the Roanoke was now excavated, and if they had any way of getting to the sea, they might carry on a most extensive and lucrative trade; the proposition now offered, was the only one by which they could get their produce to market; the funds of the Dismal Swamp Canal Company were exhausted, and the present assistance was asked to enable them to complete the canal. Mr. B. said his friend from Virginia (Mr. TAZEWELL) had clearly shown how intimately the two projects were connected, and he believed if something were not done, all the money expended in North Carolina in improving the Roanoke River would prove so much money thrown away. He thought they could not be charged with encumbering the present bill. If Congress, by a majority, had no constitutional difficulties; if they could embark on the subject of internal improvements, why should not the people of North Carolina receive some portion of the benefit to be derived from that system?

Mr. TAZEWELL replied to the objection, that sufficient time had not been afforded for the examination of the subject, by saying that the bill now under discussion had, it was true, been laying on the table for several weeks past, but it was nothing more than the printed bill of the House of Representatives, that had passed two readings in that body; and its consideration here was not more mature than that of the amendment he had just offered: the only reason, however, why his proposition was introduced as an amendment to this bill was, because there was not time for it to pass through the two Houses as an original and separate proposition; but that, when returned to the House as an amendment to the present bill, it would have sufficient time to pass.

Mr. BENTON, of Missouri, said, he should vote in favor of the amendment. Although the subject was treated here as a new one, it was a proposition which was familiar to the public mind; it related to a way that had been trav-

elled at least for seventeen years; there was no doubt that Washington had seriously considered the project, and indeed it had been before the public so frequently, and in so many forms, that every gentleman's attention must have been drawn to it, and his conclusions formed.

Mr. B. said he considered the plan of internal navigation from St. Mary's to Boston, as one entire work, and he would lend all the aid in his power to effect it from one end to the other; yet he was indisposed to carry on a work of this description by piecemeal. He looked on the works proposed to connect the waters on the front of the Atlantic coast in the same point of view. The able report of Mr. Gallatin, on that subject, showed that there were but eighty or ninety miles of cutting required to connect the whole of the tide waters from St. Mary's to Boston. He wished that the whole system should be adopted, and completed at once, and then confidence would be established throughout the whole Union. With respect to the ability to complete this inland navigation, when there were but ninety miles to cut through, it could not be doubted. When it was considered that sixty millions of dollars had been expended for transportation during the late war, over roads so abominable as to make the cannon-balls cost a dollar a pound, was it to be supposed that in time of peace, with increasing resources, they could not afford to pay for the construction of roads, which, in time to come, would prevent such an enormous waste of money? The whole system would not, in his opinion, cost more than half the sum that was expended for transportation during the late war. He should vote in favor of the proposition of the gentleman from Virginia, because he was willing it should share the same fate as the original bill, and because, although he was devoted to the completion of the entire system, he objected to the patchwork way in which it presented itself.

Mr. B. was opposed, however, to the manner in which this money was to be applied. He did not approve of associations between this Government and the people of the United States. By the bill, this great Government became nothing less than stockholders in an act of incorporation in one of the States. If they began in this way, subscribing to different associations, they would doubtless have innumerable applications of this description; every one would commence by demonstrating in as clear a manner as Euclid himself could demonstrate, that it would be a great money-making business for the United States; and by and by, petition would follow petition, praying a subscription of stock.

Mr. B. concluded by observing, that, on the report of able Engineers, he should be willing to vote any sum of money for the completion of the work from St. Mary's to Boston, but he was against its being carried on in this piecemeal way.

Mr. SMITH, of Maryland, expressed his regret

that the gentleman from Virginia had brought forward his amendment. It appeared to him that the friends of the Dismal Swamp Canal were willing that the canal in their part of the country should be completed, and had no great objection that the public money should be appropriated for that purpose, if it could be done without their vote, they being constitutionally opposed to it. But, Mr. S. said, if they would only allow the present bill to pass without attaching their proposition to it, they would be the more sure of their project succeeding when brought forward by itself at the next session.

This bill, Mr. S. repeated, was proposed twenty years ago, and in consequence of an amendment similar to the present, being proposed, the whole fell to the ground; and there was no doubt, if the present amendment prevailed, some of the Western members would propose an additional amendment, which would break down the whole.

The plan proposed by the gentleman from Missouri (Mr. BERTON) was certainly a most extensive one. He would not be satisfied by taking things piecemeal, but must have every thing transacted on the largest scale. It was his (Mr. SMITH's) opinion, that if they were to attempt to act on a general system, they would get nothing at all done. The fortifications had been erected by piecemeal; a certain sum of money equal to the means of the country had been annually appropriated; but if they had attempted to complete the whole system at once, it never would have been done; there were many parts of the report of the Corps of Engineers, on which many of the members of Congress would have been unwilling to have acted. It surely was not sound argument to say, they were to relinquish a great good because it could only be accomplished by piecemeal. If they had attempted to procure the construction of the Cumberland road according to this grand system, not an inch of it would have been made. He would advise gentlemen to be content with what they could get, and not, by attempting to overload the carriage, to break down and lose the whole.

Mr. BRANCH, of North Carolina, said, although he had his scruples in regard to the constitutionality of the present measure, which would probably influence his vote, he was not disposed to defeat the bill on the table in any other than a direct way. He was opposed to the exercise of the power, because he thought that the constitution under which they acted, did not confer it. He should forbear portraying the consequences that had arisen from the immense patronage possessed by this Government, because many instances of it must be fresh in the recollection of every gentleman. The power already exercised was excessive, and should they add new strength to this power, already so formidable to the friends of liberty? He trusted not. Should they place immense sums of money at the disposal of the Government—of the President? that President who

had not only controlled the deliberations of this Congress, but had named his successor? Was it not their duty to pause and seriously reflect on the awful consequences that were likely to result from granting this power? He trusted they would, and that every gentleman would feel it his duty to vote against this bill.

The question being taken on Mr. TAZEVELL's proposition, it was negatived by the following votes:

YEAS.—Messrs. Barbour, Benton, Branch, Elliott, Hayne, Holmes of Miss., Jackson, Taylor, Tazewell, Williams—10.

NAYS.—Messrs. Barton, Bell, Bouligny, Brown, Chandler, Clayton, Dickerson, Edwards, Findlay, Holmes of Me., Johnson of Ken., Johnston of Lou., Kelly, King of Ala., King of New York, Knight, Lanman, Lloyd of Mass., Lowrie, McIlvaine, McLean, Macon, Noble, Parrott, Ruggles, Seymour, Smith, Talbot, Thomas, Van Buren, Van Dyke—31.

The question recurring on the third reading of the bill—

Mr. MACON, of North Carolina, said he rose with a full heart, to take his last farewell of an old friend that he had always admired and loved—he meant the Constitution of the United States. On this occasion, he said he had experienced a difficulty in expressing his feelings. Perhaps old people thought more of what took place when they were young, than of the occurrences of after times; but in times of old, whenever any question touching the constitution was brought forward, it was discussed day after day; that time was now passed. Gentlemen say it is not necessary now to enter into the constitutional question on this measure. The first time he had ever known them refuse to discuss the constitutional question, involved by a proposition, was, when the act was passed incorporating the present bank of thirty-five millions; from that time the constitution had been asleep.

Every scheme that was proposed was with a view of tying the people together. The late Bank of the United States was to give them a currency alike throughout all the States. It was said at the time, that this was impossible; the friends of the bank insisted they could do it; but, had they done it? Then they got into a system of manufacturing, and everybody was to get rich by it. The next thing was the system of a great navy and fortifications, which was to make them one people from the Atlantic to the Rocky Mountains, from the Bay of Passamaquoddy to Florida; but, had it done so? And now the people were to be tied together by roads and canals. He thought the plan of the gentleman from Maryland, (Mr. SMITH,) was as wise a one as ever was devised to add power to the Government. Do a little now, and a little then, and, by and by, they would render this Government as powerful and unlimited as the British Government was. We go on deciding on these things, said Mr. M., without looking at the constitution, and I suppose we will,

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in a few years, do as was done in England—we shall appoint a committee to hunt for precedents. My heart is full when I think of all this; and what is to become of us I cannot say.

This Government was intended to be a limited one, its great objects were war and peace, and now we are endeavoring to prove that these measures are necessary, both as war and as peace measures.

Mr. M. said he would beg leave to call the attention of the Senate to a celebrated report made in Virginia in 1799, for a true exposition of the constitutional powers of this Government. If there was reason to be alarmed at the growing power of the General Government, how much more has taken place since? Congress now stopped almost at nothing, which it deemed expedient to be done, and the constitution was construed to give power for any grand scheme. This change was brought about little by little; so much had never been attempted at one time as would agitate the people. Compare these things with those which had, in old times, been done under the constitution, and the change would be found to be most astonishing. The end of them all would be, in the vulgar tongue, taxation.

He had before expressed his belief that the public debt would never be paid off. They were following Great Britain, step by step, and the final result would be, they would cease to look to the debt itself, but think only of the interest. The history of the British Government would prove, that every war had increased the public debt, and added to the burthens of the people; and what was the result in America? At the time of the Revolution, the war produced eighty-four millions of funded debt; this was now increased to ninety millions, and instead of paying it, they were following the example of Great Britain, and turning it into 4½ per cent. stock, which, like the 8 per cent. stock, no one would buy at par.

Mr. M. said he was against this Government connecting itself with any company. He would have it get clear of the Bank of the United States. Let it appoint no officer, and if it cannot dispose of its stock on good terms, let it get rid of it at any rate. His idea of internal improvement in this country, was, to take from the people all unnecessary burthens. Let them have plenty of wholesome food and good clothing, and he doubted not they would continue to raise boys and girls who would become men and women. These were the sorts of internal improvements he desired to see. It was in vain to talk of any other internal improvements strengthening the country, when there was ninety millions of public debt, and above a hundred of private debt owing. Much of the latter, indeed, was called accommodation paper, but he knew it was false.

These schemes, he thought, were monstrous strides, considering the character of the Government. The gentleman from Maryland (Mr.

SMITH) was for laying the constitution aside on this bill, but that was nothing new in that gentleman, for he had constantly pursued that plan ever since he had known him.

Mr. M. was afraid they were going to follow the system recommended by a member of a certain foreign legislature. When he was asked what measures he would adopt to make the people peaceable and submissive, he replied, "Tax them heavily, and collect it rigidly; give them enough to do, and they would never plague the Government." This was the practice in Europe, and it had succeeded very well. As to the meaning of the constitution, Mr. M. said, those who composed the Convention that formed it, certainly must have known what they intended, and all the writers of the day referred to no power of this kind; but it seemed the people of the present day understood what the framers of the constitution intended better than they did themselves. He could give no other names to his feelings than fears. It was true, he had no fears for his personal liberty, but he feared his descendants would be taxed up to the nose, so that if they got breath, it would be as much as they could do. The country now was not in a situation to pay direct taxes. In time of war, there was 15 per cent. difference in the taxes of the different States; but the same thing would not be suffered now. He was certain the Government could neither lay them nor collect them at this time. His fears might be groundless—they might be nothing but the suggestions of a worn-out old man, but they were sincere, and he was alarmed for the safety of this Government.

The question was taken on ordering the bill to a third reading, and decided in the affirmative, by the following vote:

YEAS.—Messrs. Barton, Boulogny, Brown, D'Wolf, Dickerson, Eaton, Edwards, Findlay, Jackson, Johnson of Kentucky, Johnston of Louisiana, Kelly, Lanman, Lloyd of Massachusetts, Lowrie, McIlvaine, Noble, Parrott, Ruggles, Smith, Talbot, Thomas, Van Dyke, Williams—24.

NAYS.—Messrs. Barbour, Bell, Benton, Branch, Chandler, Clayton, Elliott, Hayne, Holmes of Maine, Holmes of Mississippi, King of Alabama, King of New York, Knight, McLean, Macon, Seymour, Tazewell, Van Buren—18.

And the Senate adjourned.

FRIDAY, February 25.

*Lake Superior Copper Mines.*

The Senate proceeded to the consideration of the bill authorizing the President of the United States to appoint Commissioners to treat with the Chippewa Indians, for the right of discovering and working certain valuable Copper Mines, supposed to be on the south side of Lake Superior; and appropriating the sum of ten thousand dollars to defray the expense of treating with the said Indians. The bill having been read—

Mr. BENTON said that the existence of copper

mines on Lake Superior was a fact of historical notoriety, attested by all travellers in that region for a century and a half past. They were seen in 1689 by the monk La Hontan; in 1721, by the Jesuit, Father Charlevoix; in 1766, by Captain Carver; in 1771, by Henry; and in 1789, by Sir Alexander McKenzie. Each of these travellers published an account of these mines, and their descriptions have excited the attention of the first mineralogists of Europe. Some years before the commencement of our Revolution, a mass of silver ore was found in the same region, carried to England, and gave rise to a mining company, of which the Duke of Gloucester was the head. They caused a gallery to be opened in a hill on the south side of the lake, but finding nothing but copper, the operations were discontinued; for it was no object in the then condition of the country and state of transportation, to carry copper from Lake Superior to London.

In the year 1800, at the time when the Government of the United States contemplated an augmentation of the Navy, a resolution, adopted in both Houses of Congress, authorized an examination to be made of these mines, by a competent agent; but the policy of the Government changing soon afterwards, the examination was attended with few results.

In 1807, Mr. Gallatin deemed these mines of such value as to be enumerated by him among the sources of our national wealth.

In 1820, they were visited by Governor Cass, of Michigan, and Mr. Schoolcraft, a mineralogist, and a report of their discoveries made to the Secretary of War. A knowledge of this fact, Mr. B. said, had induced him, at the session of 1821-2, to lay a resolution upon the table of the Senate, calling upon the War Department to furnish all the information which the Department contained upon this subject. In compliance with that resolution, a report had been received, and published among the documents of 1822-'3, giving full and satisfactory information upon the extent and value of these mines. Their report has been confirmed, by a letter from Governor Cass, lately printed among our documents, and by another from Mr. Schoolcraft, (which was read,) and the fineness and purity of the metal had been proved by the *proport* of a mass of 50 pounds weight, which had been lately deposited in the Library of Congress. But the superior fineness of this metal is not a mere matter of opinion. It has been tested in the Mint of Utrecht, by the Inspector General of that Mint, upon the request of our late fellow-citizen, Governor Eustis, of Massachusetts. That distinguished citizen, anxious to be useful to his country, had possessed himself of specimens of this copper when at the head of the War Department, and carried them with him afterwards on his embassy to Holland. The report of the inspector is to be found in all the principal European works upon the subject of mineralogy. It says:

"The examination of the North American copper, in the sample received from his excellency the Minister, by the operations of the coppel, and the test by fire, has proved that it does not contain the smallest particle of silver, gold, or any other metal. Its color is a clear red; it is peculiarly qualified for rolling and forging, and its excellence is indicated by its resemblance to the copper usually employed by the English for plating. The dealers in copper call this sort *Peruvian* copper, to distinguish it from that of Sweden, which is much less malleable. The specimen under consideration is incomparably better than Swedish copper, as well on account of its brilliant color, as for the fineness of its pores, and its extreme ductility."

Mr. B. would not dilate upon the advantages to be derived from a home supply of this metal. It was an article of almost universal use. Ships could not be built without it. The cost of copper in a single ship of the line, lately built under an act of Congress, was \$57,000. Merchant vessels required a proportionate supply. In all the grain-growing districts of the United States, it was in demand for stills. The Mint of the United States made annual purchases, sometimes to the amount of \$80,000 for the coinage of cents and half cents. Combined with zinc, of which there was an exhaustless supply in the mineral districts of Missouri, copper produced brass, an article of such universal use and application that it was found in every form, and in every house, from the cottage of a peasant to the palace of a King, and applied to every use from the pin to the cannon.

Mr. B. believed that the problem of the existence of these mines ought to be solved, and that the appropriation of \$10,000 contemplated by the bill, was an object of no consideration in the magnitude of the question to be decided.

Mr. DICKERSON was not opposed to the object of the bill, but he preferred a modification of its provisions. He would prefer that an agent should be sent to examine the country, and to make a report, and to have that report returned before the subject was finally acted upon. He was no stranger to the accounts which described a large mass of native copper on the south side of Lake Superior, but detached masses of any metal were not considered as certain indications of mines. He instanced the lumps of gold found in North Carolina, and of other metals found in other places, and yet without the accompaniment of mines.

Mr. CHANDLER was in favor of having the country examined before any thing further was done; but considered the undertaking as an experiment, in which we, the United States, would probably spend more dollars than we should ever receive cents.

Mr. JOHNSON, of Kentucky, replied. He said that reports of the kind that gentlemen called for, had already been received, and referred to in debate by the senator from Missouri. If gentlemen wanted reports founded upon actual experiments in searching for mineral, such search

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would involve the commission of a trespass upon the soil and jurisdiction of the Indians—a point upon which the gentlemen had been particularly scrupulous heretofore.

Mr. BENTON rejoined. He was not skilled in the science of mineralogy; but he knew enough to know that a solitary mass of any metal, found by itself, was not a sign certain of the presence of a mine. But here the fact was not what the gentleman supposed it to be. The indications of copper on Lake Superior, were not confined to the mass which the gentleman had particularized. It was seen in thousands of places, in lumps and in veins, on both sides of the lake, on the islands within it, and extending across the country to the Falls of St. Anthony. Mr. B. said that it was a continuation of that great region of fossils and minerals, which, beginning upon the Arkansas River, traversed the State of Missouri, crossed the Mississippi at the Falls of St. Anthony, and exhibited itself on both sides of Lake Superior. As to reports, said Mr. B., we have enough of them. We know as much as we can learn, by looking at the surface of the ground. If we want to know more, we must penetrate the bowels of the earth, and that is the precise thing which the bill before the Senate proposes to do. It is in vain to say, that we must not search until we are sure of finding. Upon that principle nothing would be found, except what the chapter of accidents would give. It was equally in vain to argue against the existence of valuable mines on Lake Superior, because they were not yet discovered. The great copper mines in England, which now furnish more than one-half of the whole quantity of copper produced by all the mines in the known world, were only discovered in the last century; the name of the great salt mine in that kingdom, *Sa-lina*, was known to the Roman legions two thousand years ago; but the vast mine of salt, which furnished the salt water of that spring, was only discovered some fifty years ago.

The bill was then ordered to a third reading.

SATURDAY, February 26.

*Occupation of the Oregon River.*

The Senate then resumed, as in Committee of the Whole, (Mr. MILLS in the chair,) the consideration of the bill for the occupation of the Oregon River.

Mr. BARBOUR said, that, personally, he had no particular concern with this bill, and had not intended to have participated in the debate, as it was under the care of the Military Committee, whose members were every way able to defend it; but as the Senate had laid it on the table in consequence of his absence, he felt it due to them to state, that he approved of the bill, and would avail himself of this opportunity briefly to state the reasons which induced that opinion.

The subject would naturally divide itself into two views, under which it should be consid-

ered: 1st. Have the United States a right to the territory proposed to be settled? and, 2dly. Is it politic now to occupy it in the way proposed by the bill?

On the first point, as to title, he had but little to add to the very full exposition given by the American Plenipotentiary to the Court of St. James. He thought, by a comparison of that state paper with the counter statement of the representative of that court, there could be no difficulty in saying, that the claim of Great Britain, as to the territory on the Oregon, was without foundation. If, as Mr. B. believed, America, in the spirit of friendship and forbearance, had made a sacrifice to Russia of five degrees of her just claims on the Northwest Coast, and in the same spirit had been willing to make an equal sacrifice to Great Britain, he hoped on her part she would eagerly seize this proof of good will, and close with the terms proposed. Be that as it may, the United States can yield no further. As a consequence, our claim must be held as unquestionable many degrees to the north of the proposed settlement. As a matter of curiosity, and indeed as connected with the question in hand, one may be permitted to recur to the pretensions of the European nations to the different portions of the New World. Spain, under whom we claim, has unquestionably the undivided credit of its first discovery, and, to the extent to which this fact goes, the best title—to which she superadded the grant of the head of the Christian world, in the person of the Pope; and however ridiculous the latter may seem at this time, at the time of the exercise of this high prerogative it was respected by the civilized world. This respect, however, yielded eventually to cupidity, and the other nations of Europe proceeded to appropriate such portions as accident or circumstances enabled them, in opposition to the claims and the protests of Spain. The opposing claims were sometimes adjusted by rules established *pro re nata*. Sometimes merged in contemporary subjects of contest in Europe, or, finally, if there were any rule generally acquiesced in, it was discovery and actual occupation. Now, by the correspondence before referred to, by whatever test our claim to the territory in question shall be decided, it seems obvious that that of the United States is not to be shaken. As every gentleman is in possession of that correspondence, a more particular reference is deemed unnecessary.

Passing to the second view of the subject, Is it politic now to occupy it, in the way proposed by the bill? we must inquire what are the probable advantages or disadvantages.

The bill proposes a military establishment only on the banks of the Oregon. Its advantage is obvious, as it regards our navigating interest in time of peace. When we advert to the extent of this interest on the Pacific already, and its probable future increase, a friendly asylum, which will be furnished by this establishment, to which our vessels can repair,

in an otherwise strange, distant, and perhaps hostile region, must contribute alike to their comfort and safety.

If, from the ocean we look to the interior, and to the great and diversified territory washed by the Oregon, this settlement, as a depot for commerce, must be full of advantage. Advantages of such a position, in the event of war, are too obvious to be enumerated. What are the disadvantages to be objected to it? An unwieldy extent of empire? What is meant by this objection? If you will not settle it yourselves, give it up to some of the European nations—either will take it off your hands, and quiet your scruples on this head. But no American Senator will propose this. What then? Is it to be kept as a jungle for wild beasts? No. It is not in the order of Providence. The earth was designed for man. It is not in human power, if it were wished, to prevent the consummation of the design. Fifty years ago and the valley of the Mississippi was like the present condition of the country of the Oregon. It is now teeming with a mighty population—a free and happy people. Their march onward, therefore, to the country of the setting sun, is irresistible. I will not disguise that I look with the deepest anxiety on this vast extension of our empire, as to its possible effects on our political institutions. Whatever they may be, however, our forefathers decided the experiment should be made. When it was determined to annex the vast region of which the country in question is a part, to the old States, that question must have been deliberately weighed, and, in that determination, our destinies, whatever they may be, were placed, in this particular, beyond our control. While I look with anxiety, sir, it is mingled with a strong hope—the hope of the future rests on the strong foundation of the experience of the past.

Our advance in political science has already cancelled the dogmas of theory. We have already ascertained, by the happy combination of a National and State Governments, but above all, by a wise arrangement of the representative system, that republics are not necessarily limited to a small territory—and that a Government, thus arranged, produces not only more happiness, but more stability and more energy, than those the most arbitrary. Whether it is capable of indefinite extent, must be left to posterity to decide. But, in the most unfavorable result, a division, by necessity, from its unwieldy extent—an event, I would devoutly hope, is afar off—we even then can console ourselves with the reflection, that all the parts of the great whole will have been peopled by our kindred, carrying with them the same language, habits, and unextinguishable devotion to liberty and republican institutions.

Mr. DICKERSON, of New Jersey, said, he had hoped, that, before gentlemen opposed to this bill should be called upon for their reasons against it, the Senate would have heard from its friends

all the arguments that can be urged in its favor. The gentleman from Virginia, (Mr. BARBOUR,) has mentioned its importance to our trade in the Pacific in general terms, said Mr. D., without descending to any detail of facts or circumstances. He also stated that we had already acquired this territory of Oregon—we should have deliberated when we so acquired it—not now—that it was impossible to stop the march of population in that region—and that it was our duty to provide for extending such population, which, in that gentleman's opinion, was a sufficient reason for passing the present bill.

It is true, that, by the operation of certain causes, we have acquired this territory; but that circumstance surely imposes upon Congress no obligation to provide for its occupation or population, unless the interests of the United States should require it. To that country we owe nothing. By the present bill, that portion of country lying on the Pacific Ocean, north of the 42d degree of North latitude, and west of the Rocky Mountains, is to be erected into the territory of Oregon, without defining its northern boundary. The President to occupy the same with a military force, and cause a suitable fortification to be erected. The Indian title to be extinguished for a tract not exceeding thirty miles square, or nine hundred square miles. To erect a port of entry within and for said territory, whenever he shall think the public good may require it, and to appoint such officers as may be necessary for the same; after which, the revenue laws of the United States shall extend to, and be in full force in, said territory. It is true, the bill does not provide for the appointment of a Governor or Judges of this territory: but these no doubt are to follow. The present is but an incipient step in a much more extensive plan of populating and settling that country, as we may collect from the original bill as laid upon our tables; and even this is but a part of the whole plan, as this would include a chain of posts from Council Bluffs to the mouth of Columbia River.

In all these points of view, it is a bill of the highest importance.

As yet, we have extended our laws to no territories, but such as were or are to become States of the Union. We have not adopted a system of colonization, and it is to be hoped we never shall. Oregon can never be one of the United States. If we extend our laws to it, we must consider it as a colony.

The period never will arrive when it will be proper to adopt the measures proposed by the friends of the present bill; but, if ever, this is certainly not the time: because their adoption now would interfere with existing relations between the British Government and ours.

The territory of Oregon is bounded on the South by latitude 42, as by our treaty with Spain. On the North, the Russians renounce all claim to the country South of latitude 54° 40'. We think our claim incontestable as far as the 49th parallel of latitude, supported by

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the cession of Spain in 1819: by the discovery of the mouth of the Columbia River by sea, and afterwards by Lewis and Clark over land, and by an actual settlement at the mouth of the Columbia in 1811. This would leave the British Government a belt of 5° 40' of latitude from the Rocky Mountains and the Ocean, between our possessions and those of Russia; an arrangement, it is to be presumed, not altogether satisfactory to the British Government, and which, indeed, could be of very little importance to them. They have already extended their settlements to a point on the Columbia River, and we know they have set up a pretence of claim to all that part of the territory lying North of the Columbia to its mouth. It would have been desirable that they should have been parties in our treaty with Russia; but in this they refused to take a part. The extent of their claim is not to be ascertained or limited by Congress; but our commercial treaty with that Government certainly recognizes a claim to some part of that territory, without defining what part. By the 8d article of that treaty, it is agreed, "That any country that may be claimed by either party, on the Northwest Coast of America, westward of the Stony Mountains, shall, together with its harbors, bays, and creeks, and the navigation of all rivers within the same, be free and open for the term of ten years from the date of the signature of the convention, to the vessels, citizens, and subjects of the two powers; it being well understood, that this agreement is not to be construed to the prejudice of any claim which either of the two high contracting parties may have to any part of said country, nor shall it be taken to affect the claims of any other power or state to any part of the said country; the only object of the high contracting parties in that respect being to prevent disputes and differences among themselves."

This treaty expires in 1828, until which period, it will be highly improper to take possession of this territory by military force, or to establish a port of entry there, or, indeed, to exercise any act of possession or occupation we did not exercise at the period of making this treaty; more especially in that part of the territory to which the British Government laid claim, however unfounded.

The President, by this bill, is to take possession, by a military force, of the Oregon Territory. We claim up to the Russian line, latitude 54° 40', but consider our right incontestable to latitude 49. The President must, therefore, take possession up to that parallel. He is to cause a fort to be erected on Oregon River, on the left or the right bank, as he shall deem it expedient, and cause the Indian title to be extinguished to a tract of land thirty miles square, or 900 square miles, including said fort, and which ought to include both banks of the river, and include a considerable portion of country claimed by the British Government, but which, under the provisions of our treaty, they have not thought themselves authorized

to occupy by a military force. Our port of entry may be erected at Nootka Sound, and our revenue laws extended to every part of the territory.

As yet the British Government have done nothing to contravene the provisions of this treaty, but will they quietly look on and see us take military possession of this territory, make our establishments, purchase the Indian title to 900 square miles, erect fortifications, and establish ports of entry? By our treaty, the country is to remain open without prejudice to the claims of either party, in order to prevent disputes. But is this measure calculated to prevent disputes? On the contrary, will it not lead to immediate collisions with the British Government? Will they not also take military possession of this territory? erect fortifications, purchase the Indian title, and establish ports of entry? We cannot steal a march upon them; they are always on the alert—we shall gain nothing by this hasty, this uncalculated measure. At all events, before we proceed further, let us ascertain by negotiation, not by military force, our respective parts of this territory. If we are entitled to the whole of it, by amicable adjustment, if possible, or, if we must enforce our rights, by military occupation, let it not be done till all other means have failed. It is to be presumed the British Government are willing to enter into negotiations for settling our respective boundaries in that territory. Should the negotiation occupy many years, it ought to excite no regret, as it would give the unhappy natives of that region a little more time to breathe upon the face of the earth, before the final process of extermination, by means of a white and civilized population, shall take place. No doubt the British Government would willingly renew the third article of the treaty of 1818 for ten years more, to prevent disputes. And if the two Governments would make a perpetual treaty, to take no further possession of that territory, than they now have, or that might be necessary for the purposes of trading with the Indians, they would do more for the cause of humanity, than has been done in the present age.

In 1810 we had a settlement at the mouth of the Columbia River, called Astoria, which the British took from us during the late war—it was, however, delivered up to us under the first article of the Treaty of Ghent, and, whoever may be the private owners of the property there, the possession is in the United States, and may now be occupied as it was before the war. As yet, we have sent no military force there. What is the immediate pressure for such a force at this time? To protect our ships engaged in the whaling and fishing, and in the fur trade, and taking of sea otters. The whales are caught in the Southern latitudes, and all the sea otters we shall ever take upon the coast of the Oregon Territory, would not pay the expense of marching a single company across the Rocky Mountains.



What little commerce we may have upon that coast, will be much better protected by three or four ships of our Navy, than by any fortification on Oregon River. We have now in the Pacific Ocean the frigate *United States*, sloop of war *Peacock*, and schooner *Dolphin*, and can send more there if necessary.

But is this territory of Oregon ever to become a State, a member of this Union? Never. The Union is already too extensive—and we must make three or four new States from the territories already formed.

The distance from the mouth of the Columbia to the mouth of the Missouri, is 3,555 miles—from Washington to the mouth of the Missouri, is 1,180 miles—making the whole distance from Washington to the mouth of the Columbia River, 4,708 miles—but say 4,650 miles. The distance, therefore, that a member of Congress of this State of Oregon, would be obliged to travel, in coming to the Seat of Government and returning home, would be 9,800 miles; this, at the rate of eight dollars for every twenty miles, would make his travelling expenses amount to 8,720 dollars. Every member of Congress ought to see his constituents once a year. This is already very difficult for those in the most remote parts of the Union. At the rate which the members of Congress travel according to law, that is, twenty miles per day, it would require, to come to the Seat of Government, from Oregon, and return, 465 days; and if he should lie by for Sundays, say 66, it would require 581 days. But, if he should travel at the rate of 80 miles per day, it would require 306 days. Allow for Sundays, 44, it would amount to 350 days. This would allow the member a fortnight to rest himself at Washington, before he should commence his journey home. This rate of travelling would be a hard duty, as a greater part of the way is exceedingly bad, and a portion of it over rugged mountains, where Lewis and Clarke found several feet of snow in the latter part of June. Yet a young, able-bodied Senator might travel from Oregon to Washington and back once a year; but he could do nothing else. It would be more expeditious, however, to come by water round Cape Horn, or to pass through Behring's Straits, round the North coast of this continent to Baffin's Bay, thence through Davis's Straits to the Atlantic, and so on to Washington. It is true, this passage is not yet discovered, except upon our maps—but it will be as soon as Oregon shall be a State.

But how could a revenue be derived from such a State, or supplies sent to it, but at an enormous expense? Every portion of strength given to this State, from the other parts of the Union, would so far weaken the Union: and this territory, when it shall obtain the strength and importance of a State, will fall off from the Union by its own weight.

Is this territory to be a colony? Have we a surplus population that we wish to send from our country? So far from that, we have hun-

dreds of millions of acres of fertile lands, within the boundaries of our present States and Territories, that remain unoccupied for want of a population to take possession of them. While this is the case, shall we be holding out inducements to our citizens to seek settlements in the remote parts of the earth.

If we plant a colony at Oregon, we must protect it, and that at an enormous expense. And what advantage can we expect in return? Surely none. We form a vulnerable point where our enemy can easily reach us, and where it will be very difficult to defend ourselves. The British, last war, took from us our settlement at Astoria. This was a matter of but little importance. But if we had possessed a city there of 80,000 inhabitants, we should have expended millions for its defence, and, after all, probably have lost it.

Will this colony afford us any very important commercial advantages? Are we to supply it with manufactures? It will be a long time before we supply ourselves. We import, for our own consumption, annually, of foreign manufactures, more than the amount of five and twenty millions of dollars. Are we to have great advantages in the fur trade with the natives of that region? As soon as we establish a white population in Oregon, who will drive the Indians back to the Rocky Mountains, that trade will cease.

To carry the provisions of this act into effect, the sum of 50,000 dollars has been agreed to, as contained in the bill from the House of Representatives. This sum has, however, been struck out, for the purpose of inserting a larger. A sum ten times larger will be required before the objects of the bill can be carried fully into effect. In a report of the 23d of Feb. 1824, we have an estimate of the expense of transporting 200 troops from Council Bluffs to the mouth of Columbia River, at 44,000 dollars. It is fair to judge of the future by the past. The expense of the Yellow Stone expedition is a case in point. The transportation of 145 tons of provisions, munitions of war, &c., by the steamboat Expedition—145 tons by the steamboat Jefferson—75 tons by the steamboat Johnson, with 800 troops, chiefly from the mouth of the Missouri to Council Bluffs, 650 miles, cost the United States 255,000 dollars. There were other charges attending the expedition, to a large amount, so that it may be estimated that the transportation of our troops to Council Bluffs, with all the necessary supplies, munitions of war, &c., cost us at the rate of nearly a thousand dollars per man.

If we send men enough to Oregon to defend themselves, and establish military posts from Council Bluffs to the mouth of Columbia River, we ought to appropriate half a million of dollars as a beginning.

The third article of the treaty of 1818, was evidently intended to suspend, for ten years, any further acts of possession or occupation, than had then taken place. This seemed ne-

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cessary, to prevent disputes between the parties. Humanity had nothing to do with this arrangement. Had the object been to protect the native owners of the soil from the encroachments of a white population, a civilized population, an exterminating population, it would have been in the highest degree honorable to the contracting parties. Would to Heaven there was a perpetual decree, that should forever secure to the aborigines of that soil, the quiet possession of the country they now enjoy. If that were the case, it would be easy for the United States to adopt a plan, by which a region of at least two hundred and fifty thousand square miles might be secured as an abiding-place for three hundred thousand of the native children of the forest, who are otherwise doomed, in a short period, to be swept from the face of the earth, by the same civilized population that have exterminated the numerous tribes that once possessed the Atlantic States.

From the meridian of Council Bluffs there is an immense region, extending to the Rocky Mountains, containing about 160,000 square miles, which, from the sterility of the soil, the want of wood and water, can never be cultivated, and, of course, never admit of a civilized population. An accurate description of this region may be found in Major Long's Expedition, vol. 2, page 850. After describing this country, he says, in page 861—

"In regard to this extensive section of country, I do not hesitate in giving the opinion that it is almost wholly unfit for cultivation, and of course uninhabitable by a people depending upon agriculture for subsistence. Although tracts of fertile land, considerably extensive, are occasionally to be met with, yet the scarcity of wood and water, almost uniformly prevalent, will prove an insuperable obstacle in the way of settling the country. This objection rests not only against the immediate section under consideration, but applies, with equal propriety, to a much larger portion of the country. Agreeably to the best intelligence that can be had concerning the country both Northward and Southward of the section, and especially to the inferences deducible from the account given by Lewis and Clarke, of the country situated between the Missouri and the Rocky Mountains, above the River Platte, the vast region commencing near the sources of the Sabine, Trinity, Brasos, and Colorado, and extending northwardly to the 49th degree of North latitude, by which the United States territory is limited, in that direction, is, throughout, of a similar character. The whole of this region seems peculiarly adapted as a range for buffaloes, wild goats, and other wild game, incalculable multitudes of which find ample pasturage and subsistence upon it.

"This region, however, viewed as a frontier, may prove of infinite importance to the United States, inasmuch as it is calculated to serve as a barrier to prevent too great an extension of our population westward, and secure us against the machinations or incursions of an enemy, that might be disposed to annoy us in that quarter."

It would seem that nature had secured this

last refuge to the tribes inhabiting this vast region, but this will fail them, if we protect our trappers and hunters by an armed force, who are traversing every part of this region, destroying the beaver and buffalo, and which must effectually destroy the native inhabitants by taking from them their very means of subsistence.

The Rocky Mountains, and inhospitable regions adjoining them, within our boundaries, may be estimated at 40,000 square miles, making, in all, 200,000 square miles of country, which will never admit of a white population. Add to this about 50,000 square miles of territory, lying between the Rocky Mountains and the Western Ocean, which, although susceptible of a white population, may be permanently secured by treaties and conventions to the natives of the soil. This would altogether form a region of 250,000 square miles—a very small portion of the immense continent, which, three centuries ago, belonged exclusively to the red men of the then Western world.

The different tribes between the meridian of Council Bluffs and the Rocky Mountains, may be estimated at 120,000 souls; those west of the Rocky Mountains, at 80,000. If they were made secure, in the possession of this territory, their population would increase; and a part of the remnants of the tribes now in the bounds of the States, would, with the aid of our Government, remove into this reserved territory, where they could hope to rest in peace. From a late message of the President of the United States, it appears, that the whole number of Indians remaining in our States and Territories may be estimated at 129,000,—all of whom, it is desirable, should remove beyond the Mississippi. It is probable that as many as 80,000 of them may be induced to remove beyond the meridian of Council Bluffs; the residue will probably remain till they gradually become extinct, as numerous and once powerful tribes have already done in the Atlantic States. This would make a population, for a region of 250,000 square miles, of 800,000 souls. The British Government are famed for their magnificent plans for ameliorating the condition of the human race. Would they not readily join the Government of the United States in any measure that might be necessary to secure the whole territory claimed by both parties west of the Rocky Mountains to the present possessors of the soil? It is an object worthy of the united exertions of the two Governments—of the united exertions of Europe and America. No object so interesting to humanity has presented itself to the present age—we have institutions for the colonization of our black population—for extending the benefits of religion and civilization to the most remote parts of the earth—while the miserable remnants of the innumerable tribes that once possessed this whole continent, seem doomed to be swept from the face of the earth, by the irresistible flow of a white, civilized, Christian population, with-

out one great effort to save them. To this abused race we owe an immense debt, only to be obliterated by their extermination, which will happen in a short period, unless the civilized world will extend the means of preservation. Of the numerous tribes that once traversed the Atlantic States, the proud and fearless owners of the soil—Where are they now? With those who lived before the flood. In all the old States, except Georgia, there are to be found no more than 8,000 souls of this unhappy race. The residue exterminated, except a few who have retreated beyond the Alleghany Mountains, and who still linger in this world, to lament their wretched condition, and to relate the melancholy history of their wrongs.

We have lately passed a law for the preservation of the Indian tribes within the United States, by which a permanent residence is to be provided for them west of the State of Missouri and the Territory of Arkansas, provided they will consent to be transferred to this region; and the faith of the nation is to be pledged, that they shall be permanently protected in the peaceable possession of this country. If we should permit them to possess the country eastwardly of the meridian of Council Bluffs, and bounded on the south by the Arkansas Territory, on the east by the State of Missouri and the Mississippi River, and the Red River, up to the latitude of 49, it would be an addition of thirty or forty thousand square miles to the region already described, and furnish a safe, ample, and happy retreat to all the tribes who shall think proper to embrace the offers of our Government. As to the Oregon Territory, it can never be of any pecuniary advantage to the United States, but it may be made the means of promoting, in a most signal manner, the cause of humanity; and this is the best possible disposition that can be made of it; while the worst would be the adoption of the provisions of the present bill.

Mr. D. concluded by moving that the bill lie on the table, which was carried—ayes 19, noes 17.

#### *Unsigned Act.*

The following Message was received from the PRESIDENT OF THE UNITED STATES:

*To the Senate of the United States:*

Just before the termination of the last session, an act entitled "An act concerning wrecks on the coast of Florida," which was then proposed, was presented to me, with many others, and approved, and, as I thought, signed. It appeared, however, after the adjournment, that the evidence of such approbation had not been attached to it. Whether the act may be considered in force under such circumstances, is a point on which it belongs not to me to decide. To remove all doubt on the subject, I submit to the consideration of Congress, the propriety of passing a declaratory act to that effect.

JAMES MONROE.

Feb. 26, 1825.

MONDAY, February 28.

#### *Public Lands and Slavery.*

Mr. HAYNE, of South Carolina, submitted the following resolution:

*"Resolved by the Senate of the United States, That Congress possesses no power to appropriate the public land of the United States, 'to constitute and form a fund to aid the emancipation of slaves,' within any of the United States, or 'to aid the removal of such slaves;' and that, to constitute such a fund, or, 'to pledge the faith of the United States,' for the appropriation thereof towards these objects, would be a departure from the conditions and spirit of the compact between the several States; and that such measures would be dangerous to the safety of the States holding slaves, and be calculated to disturb the peace and harmony of the Union."*

Mr. HAYNE said, that, in asking the leave of the Senate to lay the foregoing resolution on the table, he was calling their attention to a subject of the most vital importance to those whom he had the honor to represent, and closely connected with the rights and interests of the Southern States. It would be recollected that a resolution had been submitted a few days ago, by an honorable gentleman from New York, (Mr. KING,) which proposed, (*without any request from the States*, or any call by them on the General Government for aid,) to set apart, and pledge a fund, for the emancipation and removal from the United States, "of such slaves as, by the laws of the States, respectively, may be allowed to be emancipated and removed;" which resolution had been laid upon the table, with a declaration, that it was not to be called up for consideration. This course had put it out of the power of the Southern members, whose constituents were deeply interested in the proposition, to show the unconstitutional character and dangerous tendency of measures of this nature. The only course which was left them to pursue, was to lay on the table a counter resolution, intended as a *solemn protest* against any unsolicited interference on the part of the Federal Government, with the subject, which properly belonged to the States, and which involved not only the peace but the existence of those States—a subject with which it was conceived the Federal Government had nothing to do, and concerning which Congress could not possess that species of information necessary to wise and safe legislation.

The resolution was laid on the table accordingly.

TUESDAY, March 1.

#### *Occupation of the Oregon River.*

Mr. HAYNE renewed the motion to take up the bill authorizing the occupation of the mouth of the Oregon River. He thought that justice required that an opportunity should be given to the gentleman from Missouri, (Mr. BENTON,) to answer the statements and arguments delivered

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by Mr. DICKERSON against the bill. It was a matter of public interest that the information which he possessed on the subject should go to the public; and as soon as that gentleman should have submitted his views to the Senate, Mr. H. said he would agree to postpone the bill.

Mr. CHANDLER opposed the taking up the bill, for the reasons he had before stated. He thought it was best to act first on the business necessary to be passed, and then would be a very good time to debate a bill which there was no intention of passing during the present session.

The motion to take up the bill prevailed; and the Senate went into Committee of the Whole on it, Mr. ELLIOTT in the chair.

Mr. BENTON, in reply to Mr. DICKERSON, said, that he had not intended to speak to this bill. Always unwilling to trespass upon the time and patience of the Senate, he was particularly so at this moment, when the session was drawing to a close, and a hundred bills upon the table were each demanding attention. The occupation of the Columbia River was a subject which had engaged the deliberations of Congress for four years past, and the minds of gentlemen might be supposed to be made up upon it. Resting upon this belief, Mr. B. as reporter of the bill, had limited himself to the duty of watching its progress, and of holding himself in readiness to answer any inquiries which might be put. Inquiries he certainly expected; but a general assault, at this late stage of the session, upon the principle, the policy, and the details of the bill, had not been anticipated. Such an assault, had, however, been made by the Senator from New Jersey, (Mr. D.), and Mr. B. would be unfaithful to his duty if he did not repel it. In discharging this duty, he would lose no time in going over the gentleman's calculations about the expense of getting a member of Congress from the Oregon to the Potomac; nor would he solve his difficulties about the shortest and best route; whether Cape Horn should be doubled, a new route explored under the North pole, or mountains climbed, whose aspiring summits present twelve feet of defying snow to the burning rays of a July sun. Mr. B. looked upon these calculations and problems as so many dashes of the gentleman's wit, and admitted that wit was an excellent article in debate, equally convenient for embellishing an argument, and concealing the want of one. For which of these purposes the Senator from New Jersey had amused the Senate with the wit in question, it was not for Mr. B. to say, nor should he undertake to disturb him in the quiet enjoyment of the honor which he had won thereby. Leaving all that out of view, he would proceed directly to expose and confute those parts of the gentleman's argument in which he had favored the pretensions of Great Britain at the expense of the rights and interests of his own country. These parts are—

1st. His admission of title, on the part of Great Britain, to the right bank of the Columbia River.

2d. His declarations that the United States were precluded from occupying the country on the Columbia River by the third article of the London convention of 1818.

3d. His menace of a conflict with Great Britain if we presumed to occupy it.

It is now, Mr. President, continued Mr. B., precisely two and twenty years since a contest for the Columbia has been going on between the United States and Great Britain. The contest originated with the discovery of the river itself. The moment that we discovered it, she claimed it; and without a color of title in her hand, she has labored ever since to overreach us in the arts of negotiation, or to bully us out of our discovery by menaces of war.

In the year 1790, a citizen of the United States, Capt. Gray, of Boston, discovered the Columbia at its entrance into the sea; and in 1808, Lewis and Clarke were sent by the Government of the United States, to complete the discovery of the whole river from its source downwards, and to take formal possession in the name of their Government. In 1798, Sir Alexander McKenzie had been sent from Canada by the British Government to effect the same object; but he missed the sources of the river, fell upon the *Tacoutche Tasse*, and struck the Pacific about five hundred miles to the north of the mouth of the Columbia.

In 1808, the United States acquired Louisiana, and with it an open question of boundaries for that vast province. On the side of Mexico and Florida, this question was to be settled with the King of Spain; on the north and northwest with the King of Great Britain. It happened in the very time that we were signing a treaty in Paris for the acquisition of Louisiana, that we were signing another in London for the adjustment of the boundary line between the northwest possessions of the United States and of the King of Great Britain. The negotiators of each were ignorant of what the others had done; and on remitting the two treaties to the Senate of the United States, for ratification, that for the purchase of Louisiana was ratified without restriction; the other with the exception of the fifth article. It was this article which adjusted the boundary line between the United States and Great Britain, from the Lake of the Woods to the head of the Mississippi; and the Senate refused to ratify it, because, by possibility, it might jeopard the northern boundary of Louisiana. The treaty was sent back to London, the fifth article expunged; and the British Government, acting then as upon a late occasion, rejected the whole treaty, when she failed in securing the precise advantage of which she was in search.

In the year 1807, another treaty was negotiated between the United States and Great Britain. The negotiators on both sides were then possessed of the fact, that Louisiana belonged to the United States, and that her boundaries to the north and west were undefined. The settlement of this boundary was a point in the negotiation, and continued efforts were made by

the British Plenipotentiaries to overreach the Americans, with respect to the country west of the Rocky Mountains. Without presenting any claim, they endeavored "to leave a nest egg for future pretensions in that quarter." (*State Papers*, 1822-'8.) Finally, an article was agreed to. The 49th degree of North latitude was to be followed west, as far as the territories of the two countries extended in that direction, with a proviso against its application to the country west of the Rocky Mountains. This treaty shared the fate of that of 1803. It was never ratified. For causes unconnected with the questions of boundary, it was rejected by Mr. Jefferson without a reference to the Senate.

At Ghent, in 1814, the attempts of 1803 and 1807 were renewed. The British Plenipotentiaries offered articles upon the subject of the boundary, and of the Northwest Coast, of the same character with those previously offered; but nothing could be agreed upon, and nothing upon the subject was inserted in the Treaty signed at that place.

At London, in 1818, the negotiations upon this point were renewed; and the British Government, for the first time, uncovered the ground upon which its pretensions rested. Its plenipotentiaries, Mr. Robinson and Mr. Goulbourn, asserted, (to give them the benefit of their own words, as reported by Messrs. Gallatin and Rush,) "That former voyages, and principally that of Captain Cook, gave to Great Britain the rights derived from discovery, and they alluded to purchases from the natives south of the river Columbia, which they alleged to have been made prior to the American Revolution. They did not make any formal proposition for a boundary, but intimated that the river itself was the most convenient that could be adopted, and that they would not agree to any which did not give them the harbor at the mouth of the river in common with the United States."—*Letter from Messrs. Gallatin and Rush, October 20, 1820.*

To this the American Plenipotentiaries answered, in a way better calculated to encourage than to repulse the groundless pretensions of Great Britain. "We did not assert, (continue these gentlemen, in the same letter,) we did not assert that the United States had a perfect right to that country, but insisted that their claim was at least good against Great Britain. We did not know, with precision, what value our Government set on the country to the westward of these mountains; but we were not authorized to enter into any agreement which should be tantamount to an abandonment of the claim to it. It was at last agreed, but, as we thought, with some reluctance on the part of the British Plenipotentiaries, that the country on the Northwest Coast, claimed by either party, should, without prejudice to the claims of either, and for a limited time, be opened for the purposes of trade, to the inhabitants of both countries."

The substance of this agreement was inserted in the convention of October, 1818. It consti-

tutes the third article of that Treaty, and is the same upon which the Senator from New Jersey (Mr. DICKERSON) relies, for excluding the United States from the occupation of the Columbia.

In subsequent negotiations, the British Agents further rested their claim upon the discoveries of McKenzie, in 1793, the seizure of Astoria, during the late war, and the Nootka Sound Treaty of 1790.

Such an exhibition of title, said Mr. B., is ridiculous, and would be contemptible in the hands of any other power than that of Great Britain. Of the five grounds of claim which she has set up, not one of them is tenable against the slightest examination. Cook never saw, much less took possession of, any part of the Northwest coast of America, in the latitude of the Columbia River. All his discoveries were far north of that point, and not one of them was followed up by possession, without which, the fact of discovery would confer no title. The Indians were not even named, from whom the purchases are stated to have been made anterior to the Revolutionary War. Not a single particular is given which could identify a transaction of the kind. The only circumstance mentioned applies to the locality of the Indians supposed to have made the sale, and that circumstance invalidates the whole claim. They are said to have resided to the "South" of the Columbia; by consequence they did not reside upon it, and could have no right to sell a country of which they were not the possessors.

McKenzie was sent out from Canada in the year 1793, to discover, at its head, the river which Captain Gray had discovered at its mouth, three years before. But McKenzie missed the object of his search, and struck the Pacific five hundred miles to the north, as I have already stated. The seizure of Astoria, during the war, was an operation of arms, conferring no more title upon Great Britain to the Columbia, than the capture of Castine and Detroit gave her to Maine and Michigan. This new ground of claim was set up by Mr. Bagot, his Britannic Majesty's Ambassador to this Republic, in 1817, and set up in a way to contradict and relinquish all their other pretended titles. Mr. Bagot was remonstrating against the occupation, by the United States, of the Columbia River, and reciting that it had been taken possession of, in his Majesty's name, during the late war, "and had since been considered as forming a part of his Majesty's dominions." The word "since," is exclusive of all previous pretension, and the Ghent Treaty, which stipulates for the restoration of all the captured posts, is a complete extinguisher to this idle pretension. Finally, the British negotiators have been driven to take shelter under the Nootka Sound Treaty of 1790. The character of that treaty was well understood at the time that it was made, and its terms will speak for themselves at the present day. It

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was a treaty of concession, and not of acquisition of rights, on the part of Great Britain. It was so characterized by the opposition, and so admitted to be by the ministry, at the time of its communication to the British Parliament.

[Here Mr. B. read passages from the speeches of Mr. Fox and Mr. Pitt, to prove the character of this treaty.]

"Mr. Fox said, What, then, was the extent of our rights before the convention—(whether admitted or denied by Spain was of no consequence)—and to what extent were they now secured to us? We possessed and exercised the free navigation of the Pacific Ocean, without restraint or limitation. We possessed and exercised the right of carrying on fisheries in the South Seas equally unlimited. This was no barren right, but a right of which we had availed ourselves, as appeared by the papers on the table, which showed that the produce of it had increased, in five years, from twelve to ninety-seven thousand pounds sterling. This estate we had, and were daily improving; it was not to be disgraced by the name of an acquisition. The admission of part of these rights, by Spain, was all we had obtained. Our right, before, was to settle in any part of the South or Northwest Coast of America, not fortified against us by previous occupancy, and we were now restricted to settle in certain places only, and under certain restrictions. This was an important concession on our part. Our rights of fishing extended to the whole ocean, and now it, too, was limited, and to be carried on within certain distances of the Spanish settlements. Our right of making settlements was not, as now, a right to build huts, but to plant colonies, if we thought proper. Surely these were not acquisitions, or rather conquests, as they must be considered, if we were to judge by the triumphant language respecting them, but great and important concessions." "By the third article, we are authorized to navigate the Pacific Ocean and South Seas, unmolested, for the purpose of carrying on our fisheries, and to land on the unsettled coasts, for the purpose of trading with the natives; but, after this pompous recognition of right to navigation, fishery, and commerce, comes another article, the sixth, which takes away the right of landing, and erecting even temporary huts, for any purpose but that of carrying on the fishery, and amounts to a complete dereliction of all right to settle in any way for the purpose of commerce with the natives."

—*British Parliamentary History*, Vol. 28, p. 990.

Mr. Pitt, in reply. "Having finished that part of Mr. Fox's speech which referred to the reparation, Mr. Pitt proceeded to the next point, namely, that gentleman's argument to prove, that the other articles of the convention were mere concessions, and not acquisitions. In answer to this, Mr. Pitt maintained, that, though what this country had gained consisted not of new rights, it certainly did of new advantages. We had, before, a right to the Southern whale fishery, and a right to navigate and carry on fisheries in the Pacific Ocean, and to trade on the coasts of any part of Northwest America; but that right not only had not been acknowledged, but disputed and resisted; whereas, by the convention, it was secured to us—a circumstance which, though no new right, was a new advantage."—*Same—page* 1002.

But, continued Mr. BENTON, we need not

take the character of the treaty even from the high authority of these rival leaders in the British Parliament. The treaty will speak for itself. I have it in my hand, and will read the article relied upon to sustain the British claim to the Columbia River:

*Article 3d, of the Nootka Sound Treaty.*

"In order to strengthen the bonds of friendship, and to preserve, in future, a perfect harmony and good understanding between the two contracting parties, it is agreed that their respective subjects shall not be disturbed or molested, either in navigating or carrying on their fisheries in the Pacific Ocean, or in the South Seas, or in landing on the coasts of those seas in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, or of making settlements there, the whole subject, nevertheless, to the restrictions and provisions specified in the three following articles."

The particular clause of this article, relied upon by the advocates for the British claim, is that which gives the right of *landing* on parts of the Northwest Coast, not already *occupied*, for the purpose of carrying on *commerce*, and making *settlements*. The first inquiry arising upon this clause is, whether the coast, in the latitude of the Columbia River, was unoccupied at the date of the Nootka Sound Treaty? The answer is in the affirmative. The second is, whether the English landed upon this coast while it was so unoccupied? The answer is in the negative; and this answer puts an end to all pretension of British claim founded upon this treaty, without leaving us under the necessity of recurring to the fact that the permission to *land*, and to *make settlements*, so far from contemplating an acquisition of territory, was limited, by subsequent restrictions, to the erection of temporary huts for the personal accommodation of fishermen and traders only.

The truth is, Mr. President, continued Mr. B., Great Britain has no color of title to the country in question. She sets up none. There is not a paper upon the face of the earth in which a British Minister has stated a claim. I speak of the King's Ministers, and not of the Agents employed by them. The claims we have been examining are thrown out in the conversations and notes of Diplomatic Agents. No English Minister has ever put his name to them, and no one will ever risk his character as a statesman by venturing to do so. The claim of Great Britain is nothing but a naked pretension, founded in the double prospect of benefiting herself, and injuring the United States. The fur trader, Sir Alexander McKenzie, is at the bottom of this policy. Failing in his attempt to explore the Columbia River, in 1798, he nevertheless urged upon the British Government the advantages of taking it to herself, and of expelling the Americans from the whole region west of the Rocky Mountains. The advice accorded too well with the passions and policy of that Government, to be disregarded. It is a Government which has lost no opportu-

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nity, since the peace of '83, of aggrandizing itself at the expense of the United States. It is a Government which listens to the suggestions of its experienced subjects, and thus an individual, in the humble station of a fur trader, has pointed out the policy which has been pursued by every Minister of Great Britain, from Pitt to Canning, and for the maintenance of which a war is now menaced.

[Here Mr. B. read the following passages from Sir Alexander McKenzie's History of the Fur Trade.]

"The Russians, who first discovered that, along the coasts of Asia, no useful or regular navigation existed, opened an interior communication by rivers, &c., and through that long and wide extended continent, to the strait that separates Asia from America, over which they passed to the American continent. Our situation is, at length, in some degree, similar to theirs: the non-existence of a practicable passage by sea, and the existence of one through the continent, are clearly proved, and it requires only the countenance and support of the British Government to increase, in a very ample proportion, this national advantage, and secure the trade of that country to its subjects." "By the rivers that discharge themselves into Hudson's Bay, at Port Nelson, it is proposed to carry on the trade to their source, at the head of the Saskatchewan River, which rises in the Rocky Mountains, not eight degrees of longitude from the Pacific Ocean. The Columbia flows from the same mountains, and discharges itself into the Pacific in north latitude  $48^{\circ} 20'$ . Both of them are capable of receiving ships at their mouths, and are navigable throughout for boats." "But whatever course may be taken from the Atlantic, *the Columbia is the line of communication from the Pacific Ocean*, pointed out by nature, as it is the only navigable river in the whole extent of Vancouver's minute survey of that coast; its banks, also, form the first level country in all the southern extent of continental coast from Cook's Entry; and, consequently, the most northern situation, suitable to the residence of a civilized people. By opening this intercourse between the Atlantic and Pacific Oceans, and forming regular establishments through the interior, and at both extremes, as well as along the coast and islands, the entire command of the fur trade of North America might be obtained, from latitude  $48^{\circ}$  to the pole, except that portion of it which the Russians have in the Pacific. To this may be added, the fishing in both seas, and the market of the four quarters of the globe. Such would be the field for commercial enterprise, and incalculable would be the produce of it, when supported by the operations of that credit and capital which Great Britain so pre-eminently possesses. Then would this country begin to be remunerated for the expense it has sustained in discovering and surveying the coast of the Pacific Ocean, which is at present left to American adventurers, who, without regularity or capital, or the desire of conciliating future confidence, look altogether to the interests of the moment. Such adventurers, and many of them, as I have been informed, have been very successful, would instantly disappear from before a well-regulated trade."—"Many political reasons, which it is not necessary here to enumerate, must present themselves to the mind of every man acquainted with the enlarged

system and capacities of British commerce, in support of the measures which I have briefly suggested, as promising the most important advantages to the trade of the United Kingdom."

For a boundary line between the United States and Great Britain, west of the Mississippi, McKenzie proposes the latitude of 45 degrees, because that latitude is necessary to give the Columbia River to Great Britain. His words are: "Let the line begin where it may on the Mississippi, it must be continued west, till it terminates in the Pacific Ocean, *to the south of the Columbia*."

Mr. B. said, it was curious to observe with what closeness every suggestion of McKenzie had been followed up by the British Government. He recommended that the Hudson Bay and Northwest Company should be united; and they have been united. He proposed to extend the fur trade of Canada to the shore of the Pacific Ocean; and it has been so extended. He proposed that a chain of trading posts should be formed through the continent, from sea to sea; and it has been formed. He recommended that no boundary line should be agreed upon with the United States, which did not give the Columbia River to the British; and the British ministry declare that none other shall be formed. He proposed to obtain the command of the fur trade from latitude 45 degrees North; and they have it even to the Mandan Villages, and the neighborhood of the Council Bluffs. He recommended the expulsion of American traders from the whole region west of the Rocky Mountains; and they are expelled from it. He proposed to command the commerce of the Pacific Ocean; and it will be commanded the moment a British fleet takes position in the mouth of the Columbia. Besides these specified advantages, McKenzie alludes to other "*political considerations*," which it was not necessary for him to particularize. Doubtless it was not. They were sufficiently understood. They are the same which induced the retention of the Northwestern posts, in violation of the treaty of 1783; the same which induced the acquisition of Gibraltar, the Cape of Good Hope, the islands of Ceylon and Madagascar; the same which make Great Britain covet the possession of every commanding position in the four quarters of the globe.

Mr. B. here adverted to the inconsistency, on the part of Great Britain, of following the 49th parallel to the summit of the Rocky Mountains, and refusing to follow it any further. He affirmed that the principle which would make that parallel a boundary to the top of the mountain, would carry it out to the Pacific Ocean. He proved this assertion by recurring to the origin of that line. It grew out of the Treaty of Utrecht, that treaty which, in 1704, put an end to the wars of Queen Anne and Louis the 14th, and fixed the boundaries of their respective dominions in North America. The tenth article of that treaty was applicable to Louisiana and to Canada. It provided that

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commissioners should be appointed by the two powers to adjust the boundary between them. The commissioners were appointed, and did fix it. The parallel of 49 degrees was fixed upon as the common boundary, from the Lake of the Woods, "*indefinitely to the West.*" This boundary was acquiesced in for a hundred years. By proposing to follow it to the summit of the Rocky Mountains, the British Government admits its validity; by refusing to follow it out, they became obnoxious to the charge of inconsistency, and betray a determination to encroach upon the territory of the United States, for the undisguised purpose of selfish aggrandizement.

Mr. B. would not argue the title of the United States to the same country. He would barely state it, and affirm that it was consecrated by every requisite which gives validity to the claims of nations. It rested upon,

1. Discovery of the Columbia River, by Capt. Gray, in 1790.
2. Purchase of Louisiana in 1803.
3. Discovery of the Columbia, from its head to its mouth, by Lewis and Clarke, in 1805.
4. Settlement at Astoria in 1811.
5. Treaty with Spain of 1819.

By these several titles the United States have collected into her own hands all the rights conferred by first discovery and first settlement, reinforced by all the claims of France and Spain.

The discovery of the Columbia, from the sea, in 1790, was the act of an American citizen. Captain Gray, of Boston, sailing under the flag of the United States, was the first navigator that ever saw or entered that river. He took possession of it in the name of his country, bestowed upon it a name which is national in the United States, which has been recognized by all the powers of Europe, and which, in itself, constitutes a badge of our ownership. The purchase of Louisiana gave us all the rights of Spain west of the Mississippi. If it is objected that Louisiana cannot be pushed to the Pacific Ocean, it may be answered that she may be pushed at least as far as Canada can be. The British push their Canadian title indefinitely to the west; Louisiana can go as far. No American statesman would rest a title to the Northwest Coast upon the naked purchase of Louisiana; but he would present it as a set-off to any British claim founded upon the protrusion of Canada into the valley of the Columbia. The discoveries of Lewis and Clarke were strictly national. They were officers in the service of the United States. They wore its commission, bore its flag, marched at the head of its soldiers, and did all their acts in the name of their country. They followed the Columbia from its source to its mouth, established friendly relations with numerous Indian tribes, took formal possession of the whole country, and bestowed American names, badges of sovereignty, upon every considerable stream and mountain. In 1811, a body of American citizens, sixty or

eighty in number, crossed the continent from St. Louis to the mouth of the Columbia, met another party which had come round by sea, and founded the establishment of Astoria. By this act the title of the United States was consummated. Possession, without which discovery would confer no absolute right, now completed her title; and this settlement, as an American post, was attacked and captured by the arms of Great Britain during the late war. Finally, the treaty of 1819, with Spain, by which we acquired all her rights north of 49 degrees, invested the United States with all the claims which that power possessed to the Northwest Coast. Mr. B. would not consume the time of the Senate in tracing the titles of Spain. They were universally known to have been valid against Russia to latitude 58, and against England, throughout its whole extent.

Having disposed of the questions of title, Mr. B. took up the next point of inquiry, that of possession.

On this point he took four positions.

1. That the United States had the *right* of possession.
2. That Great Britain had the *actual* possession.
3. That she *resists* the possession of the United States.
4. That, after the year 1828, the party in possession will have the *right* of possession until the question of title shall be decided by arms or negotiation.

1. On the first point, the *right* of possession on the part of the United States, Mr. B. should not have thought it necessary to say any thing to an American Senate, had it not been for the extraordinary position assumed by the Senator from New Jersey, (Mr. DICKERSON.) That gentleman maintains that the United States have no right to the possession of this country, and has quoted the third article of the London Convention of 1818, to sustain that idea. On the contrary, I maintain that we have a right to the possession, *first*, as the true owners of the country; *secondly*, as entitled to restitution under the first article of the Ghent treaty; *thirdly*, as having a mutual right of entry with the British for ten years, under the London convention above quoted. The third article of this convention stipulates that *any country* claimed by either party, to the west of the Rocky Mountains, shall be "*free and open to the citizens and subjects*" of the two powers, for the period of ten years from its signature. Yet, by a strange process of reasoning, the Senator from New Jersey construes this *mutual* right of entry, expressly secured to the "*citizens*" and "*subjects*" of the "*two*" powers, as an exclusive privilege granted to *one*, and that one not his own country, but the "*subjects*" of his Britannic Majesty. But I will confront that gentleman with authority upon this subject—the authority of a British minister, which will probably have more weight with him than the argument of an American Senator. Lord Cas-



tlereagh himself, at the time of negotiating that treaty, admitted our right to the possession. Mr. Rush, in his letter to Mr. Adams, of Feb. 1818, says: "It is proper, at this stage, to say, that Lord Castlereagh admitted, in the most ample extent, our right to be reinstated, *and to be the party in possession while treating of the title.*"

2. That Great Britain *now* has the possession, is a fact of historical notoriety. The settlement of Astoria, founded by American citizens, and named after an American, has been retained ever since the war, converted into a military post, and its name changed into the royal British appellation of Fort George. There, British cannon are mounted, the British flag flies, and the medals of George the Fourth are distributed to the chiefs and warriors of the surrounding tribes. Five other posts are established at proper distances between the sea and the mountains, so as to form a complete chain, from sea to sea, along the course of the Columbia, to Saskatchiwine and the St. Lawrence. A cord of posts, three thousand miles in length, is stretched along our flank, for a purpose which every citizen, and every Indian of the West, well understands, and to counteract which no effort is made by the American Government. The Columbia River is suffered to be occupied, in its whole extent, by British arms. The mock ceremony of delivering Astoria to Mr. Prevost, in 1818, deceives nobody. The facts are, that a British sloop-of-war touched at Lima, in the fall of 1818, took up Mr. Prevost, carried him to Astoria, (Fort George,) on the 1st day of October, and brought him away on the 6th. While there, Mr. Prevost, under the authority of the American Government, signed a receipt for the delivery of Fort George, and accepted a remonstrance from the British against the delivery, "*until the final decision of the right of sovereignty between the two Governments.*" The possession of the port was not changed, nor intended to be changed, by any act done by Mr. Prevost. He could not man the fort himself, and had neither soldier nor sailor to do it for him. The ceremony of lowering the British flag, and of hoisting the American, was a piece of form, arranged beforehand, for the purpose of satisfying the words of the Ghent treaty, by a nominal restitution, while the post itself remained with the English, in the same manner as if Mr. Prevost had remained at Lima. No attempt has since been made by the American Government to realize the possession, and Fort George, with the whole country drained by the Columbia, remains to this day in the hands of the British. The mouth of that river has become a frequented post in their hands. All the goods for the region west of the Rocky Mountains, are imported there, free of duty; and all the furs taken in that extensive country, including the Rocky Mountains, are thence exported to the great fur markets of China and Japan.

3. That Great Britain *resists* the possession of

the United States, is a fact of which our public documents furnish the proof.

As early as July, 1815, the Government of the United States turned its attention to the re-occupation of the Columbia. Claiming its restitution under the first article of the Ghent treaty, the Secretary of State, Mr. Monroe, conforming to the usages of civilized nations, requested from the British Chargé des Affaires, at Washington, Mr. Baker, a letter of instructions for the delivery. Mr. Baker declined to give the letter, upon the ground that he had no orders from his Government to do so. In 1817, the British Ambassador, Mr. Bagot, made it a subject of complaint and remonstrance that the Government of the United States should propose to re-occupy that country, and treated the proposition as an invasion of the rights and interest of his Britannic Majesty. He denied our right to be restored under the terms of the Ghent treaty, taking a distinction, where there existed no difference, between the case of a post *captured by a superior force*, and of a post *evacuated by an inferior force*, at the approach of a *superior* one. The latter of these cases he alleged to be that of Astoria.

In 1821, when the occupation of the Columbia was first presented to the consideration of Congress, the British Minister at Washington, Mr. Canning, *twice* called upon the Secretary of State, Mr. Adams, with a view to arrest the progress of that measure. He went so far as to say, that such occupation would *conflict* with his Majesty's claims in that quarter. Contemporaneously with this interference and threat, was the appearance of numerous essays in the National Intelligencer, evidently from the pens of persons in the employment of England and Russia, attacking and ridiculing all the claims of the United States to the Northwest Coast of America. The essays of anonymous newspaper writers might be deemed unworthy of notice in this chamber, but they derive importance from the fact of the repetition of their contents in the halls of Congress. Yes, Mr. President, these essays have become a magazine, from which gentlemen borrow arms for attacking the rights and interests of their own country; nor is there a weapon of argument or ridicule which has been employed throughout this debate, which cannot be traced to that source.

4. That the party in possession, in the year 1828, will have the *right* of possession until the question of title shall be decided by arms or negotiation, is a consequence resulting from the terms of the third article of the London Convention of 1818. [Here Mr. B. read the article, and continued.] It is a vulgar error, Mr. President, to suppose that, by this convention, the United States granted to British subjects the rights of trade and passage upon the Columbia River, for the period of ten years. It would be just as correct to say, that Great Britain grants the same privileges to the United States for the same period. The fact is, that

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neither grants a privilege, and neither accepts one. The title of each is placed upon a footing of perfect equality. Each has the right of trade and entry, by virtue of his own claim to sovereignty; each agrees to tolerate the trade and entry of the other for ten years. Neither surrenders any part of his claim, and the treaty is not to be construed to the disadvantage of the title of either. It results from these stipulations, that the party in possession at the expiration of the ten years, will have the right of possession until the question of title shall be decided. It requires no Vattel to tell us this. The principle is the same in national and municipal law. When the title is disputed, the party in possession of the disputed property, has a right to hold it until the question of title shall be decided—by a court of justice, when the dispute is between individuals; by arms, or negotiations, when it is between nations. In the case before the Senate, the United States have a right of possession as the true owners of the country; another right under the Ghent treaty; and a further right of entry, under the terms of this convention. But the last right is a limited privilege, which has but two and a half years to run. If it is suffered to expire, it will require no spirit of divination to foresee the result. All right of entry or possession will then be denied. Our right as owners will be said to be limited in the convention, which had expired; our right under the Ghent treaty will be said to have been satisfied by the idle ceremony, rather worse than useless, in which Mr. Prevost was an actor; and having the possession of the river, a fleet in its mouth, batteries upon its shores, a line of posts to Canada, and the command of 140,000 Indians, Great Britain may safely take the attitude of defiance, and trust to her arms for the defence of her position. That she will have the disposition to do so, can be doubted by no one who has observed the course of her policy with respect to this river, the increasing boldness of her pretensions, and the "*reluctance*" with which she agreed to such a modification of the third article of the Convention of 1818, as would leave that country open, "*for a limited time*," to the citizens of the United States, as well as to the subjects of Great Britain.—*Letter of Messrs. Gallatin and Rush, Oct. 20, 1818.*

Mr. B. now took up the bill, and complained of the unfair manner in which it had been opposed. He called it unfair, because gentlemen had stated it to be what it was not, and then made war upon the phantoms of their own imaginations. The bill proposed nothing more than the military occupation of the country, in execution of the Ghent treaty. It proposed to put money and troops at the disposition of the President, to enable him to receive the country, and to retain it. The President was bound to execute the treaties of the Union, and he could not go in person, like *Mr. John Baptist Prevost*, to receive the possession of the Oregon with

his own naked hands. Yet gentlemen had represented the bill as a proposition to found a colony, and to establish a territory, and then launched forth into all the commonplace declamation against colonies and territories. Mr. B. would not follow them into that field of idle debate; he would stick to the proposition contained in the bill. He would call for the complete execution of the Ghent treaty. He would demand if that part alone which was made for the benefit of the West, was to remain forever without execution? If a second edition of the retention of the Northwestern posts was to be struck off for the benefit of the Western people? A peculiar fatality seemed to attend upon the execution of the treaties made for the benefit of the West. In 1788, Great Britain stipulated, among other things, to surrender the posts of Niagara, Detroit, and Mackinaw; yet she retained them for thirteen years, in violation of that treaty, and for the avowed purpose of monopolizing the fur trade, and retaining the command of the Northwestern Indians. Two Indian wars, and the desolation of the frontiers of Kentucky and Ohio, were the fruits of that perfidious policy. At length we have another treaty, stipulating, among other things, for the surrender of another Western post; and already ten years have elapsed, and the post is not surrendered! The cause of retention is the same—the fur trade and the Indians; the fruits will be the same—fresh wars with the Indians, and the desolation of the frontiers of Michigan, Illinois, Missouri, and Arkansas.

But gentlemen have put some questions, which I feel myself bound to answer. They have asked, What are to be the advantages of this occupation? What the effect upon this Union? What its effect upon the Asiatic powers?

I answer, the advantages will be—

1. In securing to us the fur trade of the Rocky Mountains, the Upper Missouri, and the Columbia, worth, peradventure, a million of dollars per annum, for a century to come.

2. In preventing the British and Russians from acquiring the control of the Indians on the waters of the Columbia. These Indians are estimated at 140,000 souls, possess the finest horses, and are among the best horsemen in the world. The present age has seen the Cossacks of the Don and Ukraine, ravaging the banks of the Seine and the Loire; the next may see the Cossacks of the Oregon issuing in clouds from the gorges of the Rocky Mountains, and sweeping, with the besom of desolation, the banks of the Missouri and Mississippi.

3. In giving us a naval station on the coast of the Pacific. The want of such a station was fully exemplified in the cruise of Commodore Porter, during the late war. In that cruise, we had the extraordinary spectacle of a naval commander traversing, for three years, a sea infested with enemies, sometimes burning his prizes on the ocean, sometimes hiding them in distant islands, sometimes seeking the enemy, and sometimes flying from a superior force, and at last

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sustaining a murderous attack, and losing his ship, in a neutral port. The loss sustained on that occasion, in prizes and a frigate, (to say nothing of lives, above all price,) was fifty or a hundred times the amount of appropriation in this bill. And this loss we must expect to undergo, in all subsequent wars, unless we provide a post of our own in the Pacific Ocean. But it is not ships of war alone, and their prizes, which we are to lose for want of such a post. Our merchant vessels need the same accommodation both in peace and war. The numerous vessels engaged in the whale fishery, in the commerce of the Northwest Coast with the Islands of the Pacific Ocean, and even with China and Japan, demand this accommodation; and not a government upon earth, save that of these United States, would hesitate to grant it. To gain a post in the same sea, Russia has endeavored to open a harbor in the frozen region of Kamtschatka, and among the sand-banks of Okotaky. To gain this very Columbia, England is resorting to every trick of diplomacy, to the violation of treaties, and to the audacity of menacing war; yet the Congress of the United States hesitates, delays to take possession of its own, and endangers its title by neglecting to enforce it. In their blind and contradictory opposition, some gentlemen represent the mouth of the Columbia as unfit for the purposes of a naval station; but the report of Mr. Prevost, and the anxiety of the British to obtain it, are conclusive refutations of such objections. Mr. Prevost says:—

"The bay is spacious, contains several anchoring places in a sufficient depth of water, and is by no means so difficult of ingress as has been represented. Those enjoying the exclusive commerce have probably cherished an impression so favorable to its continuance, growing out of the incomplete survey of Lieut. Broughton, made under the orders of Vancouver, in 1792. It is true, that there is a bar extending across the river, at either extremity of which are, at times, appalling breakers; but it is equally true, that it offers, at the lowest tides, a depth of twenty-one feet of water, [the tide rising eight feet twice in twenty-four hours,] throughout a passage, exempt from them, of nearly a league in width. The Blossom, carrying more guns than the Ontario, encountered a change of wind while in the channel, was compelled to let go the anchor, and when again weighed, to tack and beat, in order to reach the harbor, yet found a greater depth, and met with no difficulty either then or on leaving the bay. The survey marked C, may be relied on for its accuracy. The bearings, distances, and soundings, were taken by Captain Hickey, who was kind enough to lend himself to the examination, and to furnish me with this result. It is the more interesting, as it shows that, with the aid of buoys, the access to vessels of almost any tonnage may be rendered secure. In addition to this, it is susceptible of entire defence, because a ship, after passing the bar, in order to avoid the breaking of the sea on one of the banks, is obliged to bear up directly for the knoll forming the cape, at all times to approach within a short distance of its base, and most frequently then to anchor. Thus, a small battery

erected on this point, in conjunction with the surges on the opposite side, would so endanger the approach as to deter an enemy, however hardy, from the attempt. This outlet, the only one between the 88th and 53d degrees of north latitude, embraces the entire range of country from the ocean to the mountains, and its interior unites the advantage of a water communication throughout, by means of the many streams tributary to the Columbia, two of which disembody opposite to each other within twenty-five leagues of the port, are navigable, and nearly of equal magnitude with this beautiful river."

4. In opening a communication between the Valley of the Mississippi and the Pacific Ocean.

This was the object of Mr. Jefferson in sending out Lewis and Clarke to explore the line of the Missouri and Columbia Rivers. That great man, always intent upon benefiting the human race, had conceived the grand idea of a commercial intercourse with India upon this line of communication. But Lewis and Clarke were *explorers*, without guides, and often fell on the most difficult and circuitous routes. Subsequent adventurers have been more successful. In passing the Ridge of the Rocky Mountains, Lewis and Clarke wandered 1,200 or 1,300 miles, over rocks, precipices, and mountains, in getting from the Falls of Missouri to the Forks of Clarke's River; points which are only 150 miles apart, and between which there is a well-beaten Indian and Buffalo road, over good ground, and through a country abounding with grass, game, and horses. In fact, there is no difficulty in any part of the route. The furs taken in the Rocky Mountains will descend the Columbia to the Pacific Ocean, and thence cross the sea to China. The same vessel can bring a return cargo of East India goods, and can ascend the Columbia to the head of tide water, 188 miles. The Great Falls can be passed by a portage of 400 yards on the left bank, and 1,200 on the right; but, during the periodical floods, in the months of April, May, and June, they can be passed without any portage at all. Vessels may be lifted over the fall by a vast lock, neither made nor filled by the hands of man. Mr. B. explained this phenomenon—one of the most grand and striking in the works of nature. The Great Falls had a pitch of thirty-eight feet perpendicular. Immediately below, the river spread out into a basin of three miles diameter. The river issued from this basin through a channel narrower than that by which it entered. The consequence was, that, in every annual flood, the basin filled up; the reflux current rolled back upon the fall, buried it, and presented four feet of smooth water, where, in the absence of the flood, there was a pitch of thirty-eight. The passage through the mountains was free from difficulty. For eight months in the year, snow and sleighs could be relied upon. From the foot of the mountains issued the Missouri River, navigable, without the slightest obstruction, to its junction with the Mississippi, two thousand five hundred and seventy-five

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measured miles. Mr. B. then adverted to two circumstances, which would facilitate the introduction of East India goods upon the line of the Columbia and Missouri Rivers: first, the goods to be introduced were of little weight, small bulk, and great value; secondly, the river to be ascended was short, the one to be descended was long: and he expressed the most confident belief, that, within one year after the occupation of the Columbia, the rich productions of the East Indies would flow into the valley of the Mississippi, upon this new and truly national route.

5. But the greatest of all advantages to be derived from the occupation of this country, is in the exclusion of foreign powers from it. It is a country too great and too desirable, to remain longer without civilized inhabitants. In extent, soil, and climate, it is superior to the old thirteen United States. In 1804, it was written by Humboldt, "that the banks of the Columbia invite Europeans to found a fine colony there, for its banks afford fertile land in abundance, covered with superb timber." In 1805 Russia attempted to colonize it; but the ship destined for that purpose, and carrying the Emperor's chamberlain, and ambassador to Japan and China, the Count Resanoff, missed the mouth of the river, went down upon the coast of California, and there commenced a settlement. England now has her iron grasp upon it, and it will require a vigorous effort of policy, and perhaps of arms, to break her hold. Even if foreign powers had no desire to aggrandize themselves with this possession, mere adventurers might enter upon it, as Eneas entered upon the Tyber, and as our forefathers came upon the Potomac, the Delaware, and the Hudson, and renew the phenomenon of mere individuals laying the foundation of a future empire. In the mean time, our President has proclaimed the principle, and the whole nation has responded to it, that no part of this continent is open to European colonization; but what signifies the proclamation of a just and noble principle, unless it is supported by money and arms? When have the rights of nations been respected, merely because they were just? When has an individual, or a sovereign power, gained respect or justice for itself, by a pusillanimous desertion of their own rights?

Within a century from this day, a population, greater than that of the present United States, will exist on the west side of the Rocky Mountains. I do not deal in paradoxes, but in propositions as easily demonstrated as the problems in Euclid. Here, then, is the demonstration: Dividing our portion of this continent into five equal parts, and there will be found, in the valley of the Mississippi, three parts; on the east side of the Alleghany Mountains one part, on the west of the Rocky Mountains one part. Population will distribute itself accordingly; three parts in the valley, and one part on each of the appurtenant slopes. Within a century, the population of the whole will be

one hundred and sixty millions; of which a hundred millions will drink the waters which flow into the Mississippi, and sixty millions will be found upon the lateral streams which flow, east and west, towards the rising and the setting sun. The calculation is reducible to mathematical precision. We double our numbers once in twenty-five years, and must continue to do so until the action of the prolific principle in man shall be checked by the same cause which checks it in every race of animals—the stint of food. This cannot happen with us until every acre of our generous soil shall be put in requisition; until the product of more than a thousand millions of acres shall be insufficient to fill the mouths which feed upon them. This will require more people than a century can produce, even at the rate of doubling once in twenty-five years; a rate which will give us one hundred and sixty millions in the year 1920: that is to say, twenty millions more than the Roman Empire contained in the time of Augustus Cæsar. A century is but a point in the age of a nation. The life of an individual often spans it; and many are the children now born, who will see the year 1920, and the accomplishment of the great events which their nurses believe to be impossible.

Upon the people of Eastern Asia, the establishment of a civilized power upon the opposite coast of America, could not fail to produce great and wonderful benefits. Science, liberal principles in government, and the true religion, might cast their lights across the intervening sea. The valley of the Columbia might become the granary of China and Japan, and an outlet to their imprisoned and exuberant population. The inhabitants of the oldest and the newest, the most despotic and the freest Governments, would become the neighbors, and, peradventure, the friends of each other. They have the same enemies, and by consequence, should stand together as friends. Russia and the legimates menace Turkey, Persia, China, and Japan; they menace them for their riches and dominions; the same powers menace the two Americas for the popular forms of their governments. To my mind the proposition is clear, that Eastern Asia, and the two Americas, as they have become neighbors, should become friends; that they should stand together upon a sense of common danger; and I, for one, said Mr. B., had as lief see American ambassadors going to the Emperors of China and Japan, to the King of Persia, and even to the Grand Turk, as to see them dancing attendance upon those European legimates, who hold every thing American in contempt and detestation.

Mr. B. concluded with saying, that these were speculations of his own, shooting far ahead of the proposition under debate. The proposition is to execute the Ghent treaty, to expel the British from the Columbia River, to perfect our title, by reducing the disputed territory to possession; and, whatever use we may make of it afterwards, whether we shall hold it as a

military post and naval station, settle it as a colony, or found a new Republic upon it, there were certain preliminary points on which Mr. B. believed that both the Senate and the people of the United States would cordially agree, namely, neither to be *tricked* nor *bullied* out of their *land*, nor to suffer a *monarchical* power to grow up upon it.

[In the course of Mr. BENTON's speech, Mr. DICKERSON denied that he had acknowledged the right of the British Government to any part of the territory of Oregon.]

Mr. LOWRIE moved to lay the bill on the table; which motion was decided by yeas and nays, as follows:

YEAS.—Messrs. Barton, Bell, Branch, Brown, Chandler, Clayton, D'Wolf, Dickerson, Edwards, Elliott, Findlay, Gaillard, Holmes of Maine, King of Alabama, Lanman, Lowrie, Macon, Parrott, Seymour, Smith, Tazewell, Van Buren, Van Dyke, and Williams—25.

NAYS.—Messrs. Barbour, Benton, Boulogny, Cobb, Hayne, Jackson, Johnson of Kentucky, Johnston of Louisiana, Lloyd of Massachusetts, Mills, Noble, Ruggles, Talbot, and Thomas—14.

#### *Reception of the President Elect.*

Mr. MILLS submitted the following resolution:

*Resolved*, That a committee be appointed to make such arrangements as may be necessary for the reception of the President, on the occasion of his inauguration.

The resolution was read, and a committee appointed, consisting of the following gentlemen:

Messrs. MILLS, VAN BUREN, and EATON.

The Senate took up, as in Committee of the Whole, the bill to provide for punishment of certain crimes against the United States, and for other purposes.

A considerable time was spent in the discussion of the details of this bill, which was participated in by Messrs. HAYNE, HOLMES of Maine, COBB, CHANDLER, DICKERSON, VAN BUREN, BROWN, JOHNSON of Ken., and TALBOT.

On the question, "Shall the amendments be engrossed, and the bill read a third time?" it was decided in the affirmative, by yeas and nays, as follows:

YEAS.—Messrs. Barbour, Barton, Bell, Benton, Branch, Cobb, Clayton, D'Wolf, Eaton, Elliott, Findlay, Gaillard, Hayne, Holmes of Maine, Jackson, Johnson of Kentucky, Johnston of Louisiana, Kelly, King of Alabama, Lanman, Lloyd of Massachusetts, Lowrie, Mills, Noble, Parrott, Seymour, Smith, Tazewell, Thomas, Van Buren, and Williams—31.

NAYS.—Messrs. Brown, Chandler, Dickerson, Macon, Ruggles, and Talbot—6.

#### WEDNESDAY, March 2.

The committee appointed to make such arrangements as may be necessary for the reception of the President of the United States,

on the occasion of his inauguration, reported, in part, the following resolution:

*"Resolved*, That the Secretary of the Senate inform the House of Representatives, that the President Elect of the United States, on Friday next, at 12 o'clock, will take the oath of office required by the constitution, in the chamber of the House of Representatives; and that he also inform the President Elect, that the Senate will be in session at that time."

#### THURSDAY, March 3.

The Senate having finished the business of the session, Mr. SMITH offered the following resolution, which was unanimously adopted:

*Resolved*, That the thanks of the Senate be presented to the Hon. JOHN GAILLARD, President of the Senate pro tempore, for the ability, impartiality, and integrity, he has evinced in discharging the arduous and important duties of his station.

Whereupon, Mr. GAILLARD rose, and delivered the following address:

*Gentlemen*: The standing of this Body in public estimation, and the character it has to sustain, can never fail to insure to your Presiding Officers an exemption from much of those difficulties and embarrassments that are sometimes to be encountered by those who are called upon to preside over deliberative assemblies; and the experience which I have had of your liberality, furnishes abundant proofs that they may always rely on your patient endurance and indulgent support. Actuated by an anxious desire to endeavor to meet your reasonable expectations, however I might fail in the attempt; and influenced, I trust, by no other considerations than such as would lead to a faithful and impartial discharge of the duties confided to me; the gratification I derive from this assurance of your satisfaction, is only to be surpassed by the profound respect and gratitude with which it is received. In the hope and expectation that most of us may again be assembled together at this place, under the same kind and friendly feelings which have heretofore prevailed within these walls; and with the prospect before us of soon being permitted to return to our homes, families, and friends, and the associations connected with objects so dear and so interesting; the pleasure arising from the termination of our session would have been without alloy—but for the recollection that we shall then have to separate, and, from the vicissitudes attendant on human life and human affairs, perhaps forever, from many valued associates, esteemed for their worth, respected for their virtues, endeared to us by long, social, and friendly intercourse, and who will, I am persuaded, carry with them to their retirement our respect, esteem, and regard.

I avail myself of this occasion to express to them and to all of you, gentlemen, in the utmost sincerity of heart, the high sense of gratitude which I feel for the many acts of kindness and of favor that you have bestowed on me: they have been such as can never be effaced from my memory, and they will ever be to me a source of proud and of grateful recollections. Accept, I pray you, individually, as well as collectively, an affectionate farewell, and my best wishes for your health, happiness, and prosperity.

## EIGHTEENTH CONGRESS.—SECOND SESSION.

## PROCEEDINGS AND DEBATES

IN

## THE HOUSE OF REPRESENTATIVES.

MONDAY, December 6, 1824.

At 12 o'clock this day, the Speaker (Hon. HENRY CLAY, of Kentucky) took the chair; and the roll being called, one hundred and eighty members answered to their names; and a committee was appointed on the part of this House to join with such committee as should be appointed on the part of the Senate, to wait on the President of the United States, and inform him that a quorum of both Houses is assembled, and ready to receive any communication he may have to make to them.

Mr. MITCHELL, of Maryland, offered the following resolution:

*Resolved*, That the Honorable the Speaker invite our distinguished guest and benefactor, General LAFAYETTE, to a seat within the Hall of this House, and that he direct the manner of his reception."

This resolution gave rise to some conversation as to what would be the most proper mode of expressing the respect felt by this House towards the illustrious individual referred to, which resulted in the adoption of the following resolution, which was proposed by Mr. A. STEVENSON, as a substitute for the other:

*Resolved*, That a committee be appointed on the part of this House, to join such committee as may be appointed on the part of the Senate, to consider and report what respectful mode it may be proper for Congress to adopt to receive General LAFAYETTE, and to testify the very high gratification which he has afforded it by his present visit to the United States, made in pursuance of the invitation given to him by Congress, during its last session."

The committee was appointed, to consist, on the part of the House, of thirteen members.

TUESDAY, December 7.

A Message was received from the President of the United States, by Mr. EVERETT, and read at the clerk's table. (See Senate proceedings, p. 93.)

On motion of Mr. TAYLOR, the Message, with the accompanying Documents, were referred to a Committee of the Whole on the state of the Union, and 8,000 copies were ordered to be printed.

WEDNESDAY, December 8.

On motion of Mr. TAYLOR, of New York, the House resolved itself into a Committee of the Whole on the state of the Union, (Mr. P. P. BARBOUR, of Virginia, in the chair,) and distributed, by a number of distinct resolutions, the various parts of the President's Message to the proper committees.

The several select committees, established by these resolves, were ordered to consist of seven members each, with the exception of that in relation to a provision for General LAFAYETTE, which was ordered to consist of thirteen.

Mr. MITCHELL, from the Joint Committee appointed to determine in what manner General LAFAYETTE shall be received by the two Houses of Congress, asked and obtained leave to report, and presented the following:

"The committee appointed on the part of this House, to join such committee as might be appointed on the part of the Senate, to consider and report what respectful mode it may be proper for Congress to adopt to receive General LAFAYETTE, and to testify the very high gratification which he has afforded by his present visit to the United States, made in pursuance of the invitation given to him by Congress, during its last session, report:

"That they have met a committee of the Senate on that subject, and that the committees have agreed to recommend to their respective Houses that each House receive General LAFAYETTE in such manner as it shall deem most suitable to the occasion, and the committee recommend to the House the following resolutions:

*Resolved*, That the congratulations of this House be publicly given to General LAFAYETTE on his arrival in the United States, in compliance with the

wishes of Congress, and that he be assured of the gratitude and deep respect which the House entertains for his signal and illustrious services in the Revolution, and the pleasure it feels in being able to welcome him, after an absence of so many years, to the theatre of his early labors and early renown.

"Resolved, That, for this purpose, General LAFAYETTE be invited by a committee to attend the House on Friday next, at one o'clock; that he be introduced by the committee, and received by the members standing, uncovered, and addressed by the Speaker, in behalf of the House, in pursuance of the foregoing resolution."

The resolutions were adopted unanimously, and so entered on record. The Committee of Invitation was appointed to consist of 24 members, on suggestion of Mr. STEVENSON.

FRIDAY, December 10.

*Reception of Lafayette.*

Mr. CONDIOT, of New Jersey, moved that a messenger be sent to the Senate of the United States, inviting that body to attend in the Chamber of Representatives, at one o'clock, to-day, on the reception of General LAFAYETTE.

It was objected to the adoption of this motion, that the Senate had, yesterday, adjourned over to Monday. The question, however, was taken, and the motion passed in the affirmative—ayes 90, noes 69.

Seats were accordingly ordered for the members of the Senate, who shortly after entered, and took the places assigned them.

At one o'clock, according to previous arrangement, General LAFAYETTE appeared, attended by the committee of twenty-four members of the House of Representatives, and was introduced to the House by Mr. MITCHELL, chairman of the committee.

On the General's entry, the members and persons admitted on the floor of the House, rose, and remained standing, uncovered.

Mr. Speaker then rose, and, in behalf of the House, addressed the Nation's Guest in the following eloquent strain, adorned by those graces of oratory for which he is distinguished:

"GENERAL: The House of Representatives of the United States, impelled alike by its own feelings, and by those of the whole American People, could not have assigned to me a more gratifying duty than that of being its organ to present to you cordial congratulations upon the occasion of your recent arrival in the United States, in compliance with the wishes of Congress, and to assure you of the very high satisfaction which your presence affords on this early theatre of your glory and renown. Although but few of the members who compose this body, shared with you in the war of our Revolution, all have a knowledge, from impartial history, or from faithful tradition, of the perils, the sufferings, and the sacrifices, which you voluntarily encountered, and the signal services in America and in Europe, which you performed, for an infant, a distant, and an alien people; and all feel and own the very great extent of the obligations under which you have placed our country. But the relations in which you have ever stood to the

United States, interesting and important as they have been, do not constitute the only motive of the respect and admiration which this House entertains for you. Your consistency of character, your uniform devotion to regulated liberty, in all the vicissitudes of a long and arduous life, also command its highest admiration. During all the recent convulsions of Europe, amidst, as after, the dispersion of every political storm, the people of the United States have ever beheld you true to your old principles, firm and erect, cheering and animating with your well-known voice, the votaries of Liberty, its faithful and fearless champion, ready to shed the last drop of that blood which, here, you so freely and nobly spilt in the same holy cause.

"The vain wish has been sometimes indulged, that Providence would allow the Patriot, after death, to return to his country, and to contemplate the intermediate changes which had taken place—to view the forests felled, the cities built, the mountains levelled, the canals cut, the highways constructed, the progress of the arts, the advancement of learning, and the increase of population. General, your present visit to the United States is the realization of the consoling object of that wish. You are in the midst of posterity! Everywhere you must have been struck with the great changes, physical and moral, which have occurred since you left us. Even this very city, bearing a venerated name, alike endeared to you and to us, has since emerged from the forest which then covered its site. In one respect, you behold us unaltered, and that is in the sentiment of continued devotion to liberty, and of ardent affection and profound gratitude to your departed friend, the Father of his country, and to your illustrious associates in the field and in the cabinet, for the multiplied blessings which surround us, and for the very privilege of, addressing you, which I now exercise. This sentiment, now fondly cherished by more than ten millions of people, will be transmitted, with unabated vigor, down the tide of time, through the countless millions who are destined to inhabit this continent, to their latest posterity."

To which address, General LAFAYETTE replied, in a tone in which energy of character, and sensibility of feeling, were most interestingly blended, to the following effect:

"Mr. Speaker, and  
Gentlemen of the House of Representatives:

"While the People of the United States and their honorable Representatives in Congress have deigned to make choice of me, one of the American veterans, to signify in his person their esteem for our joint services, and their attachment to the principles for which we have had the honor to fight and bleed, I am proud and happy to share those extraordinary favors with my dear Revolutionary companions. Yet, it would be, on my part, uncandid and ungrateful not to acknowledge my personal share in those testimonies of kindness, as they excite in my breast emotions which no adequate words could express.

"My obligations to the United States, sir, far exceed any merit I might claim. They date from the time when I had the happiness to be adopted as a young soldier, a favored son of America. They have been continued to me during almost half a century of constant affection and con-

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fidence; and now, sir, thanks to your most gratifying invitation, I find myself greeted by a series of welcomes, one hour of which would more than compensate for the public exertions and sufferings of a whole life.

"The approbation of the American People, and their Representatives, for my conduct during the vicissitudes of the European Revolution, is the highest reward I could receive. Well may I stand 'firm and erect,' when, in their names, and by you, Mr. Speaker, I am declared to have, in every instance, been faithful to those American principles of liberty, equality, and true social order, the devotion to which, as it has been from my earliest youth, so it shall continue to be to my latest breath.

"You have been pleased, Mr. Speaker, to allude to the peculiar felicity of my situation, when, after so long an absence, I am called to witness the immense improvements, the admirable communications, the prodigious creations, of which we find an example in this city, whose name itself is a venerated Palladium; in a word, all the grandeur and prosperity of these happy United States, which, at the same time they nobly secure the complete assertion of American Independence, reflect on every part of the world the light of a far superior political civilization.

"What better pledge can be given of a persevering national love of liberty, when those blessings were evidently the result of a virtuous resistance to oppression, and of institutions founded on the rights of man and the Republican principle of self-government? No, Mr. Speaker, posterity has not begun for me—since, in the sons of my companions and friends, I find the same public feelings, and permit me to add, the same feelings in my behalf, which I have had the happiness to experience in their fathers.

"Sir, I have been allowed, forty years ago, before a Committee of a Congress of thirteen States, to express the fond wishes of an American heart. On this day I have the honor, and enjoy the delight, to congratulate the Representatives of the Union, so vastly enlarged, on the realization of those wishes, even beyond every human expectation, and upon the almost infinite prospects we can with certainty anticipate.

"Permit me, Mr. Speaker, and gentlemen of the House of Representatives, to join, to the expression of those sentiments, a tribute of my lively gratitude, affectionate devotion, and profound respect."

After the General and the members had resumed their seats, and a short pause occurred,

Mr. MITCHELL, the organ of the committee of reception, moved an adjournment.

The motion was agreed to, and the House was adjourned to Monday.

The Speaker then descended from the chair, and most affectionately saluted the General. His example was followed by the members of the House, individually, and some time was spent in this agreeable manner, before the General retired.

FRIDAY, December 17.

*Niagara Sufferers.*

Mr. TRACY moved to take up the bill authorizing payment for property lost or destroyed by

the enemy during the late war; which was carried—ayes 91, noes 42.

The House accordingly went into Committee of the Whole on that bill, (Mr. CAMPBELL, of Ohio, in the chair.)

Mr. WILLIAMS, of North Carolina, said, that he considered the question presented by this bill to be of nearly as great importance as any that would occur during the present session of Congress; as proposing to revive the famous act of March, 1816, which had been the cause of greater drain from the Treasury of the United States than had ever been made, upon the same principle, from the Treasury of any civilized Government on earth; for no Government ever had a standing law of the nature of that. The bill now before the House, in effect proposed a renewal of the most important section (the 9th) of that law. At this moment, Mr. W. said he felt himself entirely unprepared to go into such an examination of this question as it might require. He, therefore, hoped the House would indulge him, and others similarly situated, with further time for consideration of the subject. His object was not unnecessarily to delay the consideration of the subject; but he thought it important to have before the House, and in possession of every member, the correspondence which took place between Admiral Cochrane and the Secretary of State relative to the burning of property on the Niagara frontier. There was another document, also, which he wished the House to be in possession of—a document originally brought here to carry these claims through the House, but which, since the year 1818, he had never been able to lay his hands upon. When these claims first appeared before the House, the claimants never pretended to rest them upon the ground that the buildings were occupied by the military authority at the time of their destruction. They then maintained that all these burnings took place on the ground of retaliation by the enemy; and believing that ground sufficient to sustain their claims, they produced all the proof of it that they could. But as the House had refused to allow the claims on that ground, they have now changed their position, and placed their claims on a different one. Mr. W. wished, for his part, to examine fully the pretext upon which a re-enactment of the pernicious law of 1816 was claimed; and with these views he wished the committee to rise, in order to have the papers printed.

Mr. CAMBRELENG, of New York, said, he hoped that no delay would be interposed in bringing this subject before the House—but that they should be called to act upon it immediately; being persuaded that they were as fully prepared to do so now, as they would be at any future time. He expressed his astonishment that, of all the members of the House, the Chairman of the Committee of Claims should profess any want of information on this subject—since, from his official situation, as



well as the able and conspicuous share he had had in former discussions on this matter, he should have supposed him to be better informed of every circumstance relating to it, than any other person. If permitted to proceed, Mr. C. said that he should contend that, on the ground first taken by the claimants, viz., that the injury their property had sustained was inflicted by the enemy as a measure of retaliation, their claim was just, inasmuch as it was in retaliation of injuries first inflicted on the enemy by the express order of this Government, through the late Secretary of War, in the burning of the village of Newark. On this ground, the claim was perfectly sustainable; as, also, it would be on the other ground, viz., that the injuries were sustained in consequence of the occupation or use of the property by the United States. If either ground were established, these claims ought to be allowed.

Mr. WILLIAMS renewed his motion that the committee rise: but once more suspended it, at the particular request of Mr. TRACY, who made some explanation in reply to what Mr. W. had said, as to the disappearance of the document he had referred to. No public paper on the subject had been withdrawn, but, on the contrary, all the papers connected with the general subject, had been printed with the report of the committee.

The committee then rose, reported progress, and had leave to sit again; and on motion of Mr. WILLIAMS, the papers referred to whilst in Committee of the Whole, were ordered to be printed.

MONDAY, December 20.

*Virginia Interest Claim.*

Mr. A. STEVENSON, of Virginia, rose to ask the attention of the House to a subject which was interesting to Virginia, and merited an early consideration. It related to the *unsatisfied* claims of that State, for *advances of money* made by her for the use of the General Government, during the late war. The subject, Mr. S. said, had been presented to Congress by the President, in a very strong message, at the last session; but owing to circumstances unnecessary to mention, had not been acted on. He wished it taken up, and finally disposed of. It was proper, however, that he should state to the House, that Virginia would press the payment only of that part of the claim which related to *interest actually paid by her on moneys borrowed for the use of the General Government, and disbursed in its service*. He stated this fact to prevent any *misunderstanding as to the character of the claim, and the principles* which it involved. Of its merits, Mr. S. said, he would not now speak. At a proper time, he would endeavor to show to the House that the claim asserted by Virginia was founded in justice and authority, and ought to be paid. This, however, he would say, that, whatever the conduct of other States in the Union might

have been during the late war, there was not one who had been more steadfast and disinterested in her services than Virginia, or more loyal in the devotion of her resources to the general defence. She now only asked that her claims should be speedily adjusted upon fair and just principles. This was due as well to this Government as to Virginia, and with that view he begged leave to submit the following resolution:

*Resolved*, That the Committee on Military Affairs be instructed to inquire into the propriety of providing by law for the reimbursement of the amount of interest paid by the State of Virginia, upon loans of money negotiated by her for the use of the General Government, during the late war between Great Britain and the United States.

Mr. SHARPE, of New York, moved to amend the resolution, so as to refer the subject to the Committee of Claims; which was carried—ayes 94, noes 68.

Thus amended, the resolution was agreed to.

*Occupation of the Columbia River.*

Mr. FLOYD, of Virginia, moved that the House go into Committee of the Whole on the State of the Union, with a view to take up the bill "for the occupation of the mouth of the Columbia (or Oregon) River;" which was agreed to, and the House went into committee accordingly, Mr. A. STEVENSON in the chair.

The bill was read by sections, and the several blanks were filled.

Mr. FLOYD, of Virginia, said, so much, Mr. Chairman, has been said and written on this subject, that I will be as concise as possible, as I do not wish to consume the time of the committee. This subject has been so long before the House, that I presume the mind of every gentleman must be satisfied as to the propriety of the measure; I will, therefore, only present a few new ideas and additional facts which are in my possession, and my inferences from those facts, and content myself, with that defence of the measure, to leave the bill to its fate.

I know that it is an opinion much urged, and generally adopted, that we should keep our population as much condensed as possible; that there would be danger in erecting a territory at so great a distance, as protection would be difficult, if not impossible, and that there would be danger of separation; that, in all military operations, the frontier to be protected should be as small as the nature of the case would permit, and that well fortified.

In replying to all these objections, I would not wish to be understood as urging my own opinions. I will candidly state to the House, that, to me, it seems very doubtful, whether military posts and fortified places are at all necessary in a country situated as ours is. Notwithstanding these are my opinions, I am willing to grant any thing in reason which the administration of the country may think necessary to its defence. We often receive opinions from others, and from books, taking the subject

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up as presented by writers, rather than using them as the means of becoming acquainted with the matter, and, by our own mature reflection, apply them to the existing state of things. This I believe to be the case, as it regards our notions of military defences. It is indeed true, that, in the early ages, Europe was held by some powerful nations, who fortified their cities. At that day, the nation was almost altogether in the city, the country being tilled by the poor sent out for the purpose, or by slaves; and, when it was overrun by the Northern barbarians, they were obliged to defend themselves in these fortresses as they could; it was not war, but conquest and extermination.

The fierce contest was soon over; the country was parcelled out among the barons who followed their daring chief, or king, the great baron of the invading force.

Thus placed amid a new and beautiful country, fertile and abounding in wealth, these fierce and haughty barbarians soon engaged in acts of strife and mutual aggression. It became a matter of importance to each, to secure himself against the sudden attack of his neighbor, which, by means of beacon fires, kindled on the tops of mountains, a blast from the trumpet, or other signals of co-operation, irruptions were frequently made on each other's dominions, without an hour's notice; hence, strong castles or fortresses became necessary, or rather indispensable. Warring with each other, and sometimes with the king, filled up the space of many years. The executive, however, gradually increasing its power, violating the rights of the people, and constantly encroaching on the power of the barons, established itself more firmly; yet, the castles were not finally destroyed on the continent, until about the reign of Henry IV. As the barons were subdued, and their fortresses demolished, standing armies, by degrees, were introduced, and each king maintaining an army, greater perhaps than the actual state of things required, compelled his neighbor to resort to the like means for security and defence; thus the circle of the kingdom was fortified instead of the barony, and the nations of Europe came to fortify themselves against each other, just as the petty barons had done; the frontier was enlarged, but the system not changed; hence, the multitude of fortresses that cover Europe. Here, however, we have nothing of this sort to fear; our country is of such vast extent, that we are protected by it from the broils of petty powers, tormenting by their intrigues, and secure from the unwarrantable ambition of the great states, by being removed from them. We have no enemy, nor can have any, but such as comes from Europe,—Europe, the disturber of the world!

Should we any time, unfortunately, find ourselves involved in war with any power in Europe, we shall always have time enough to prepare for the event; and, as we should have to meet in battle, I believe it would be of

little consequence to the American people, how, or where. Our large cities, concentrating much wealth, and attracting the attention of an enemy, ought to be secured by strong and judicious fortifications; for the rest, the arms of the citizens should be their fortresses, as none can doubt, that, in all time to come, should an enterprising enemy come to our shore, and wish to land, he can do so, in despite of all the fortifications raised, or to be raised. Again, might it not be an objection to this vast system of fortifying our frontier, the favorite plan of some, that the fortress might fall into the hands of an enemy, and offer him a safe place to obtain water, and secure their ships, and repair all damage to the army and navy? This occurrence would be a most serious thing to us. He would then have to be beaten out by a much superior force, which would require an expense correspondingly large, nor could these vast fortresses be safely intrusted to a few men; the force ought to be at least sufficient to man the works, which, at one point in Virginia, I have understood, would require from seven to ten thousand men; this, too, at a place, where, during the late war, we had not a man. I repeat it, that, in my opinion, the rifle, and a knowledge of its use, is the best defence for our country, with the exception of the commercial cities, which should be secured by strong forts. Sparta thought so, in days long past; and Napoleon has proved, in the late wars of Europe, how easy it is to march by those fortresses, and conquer his enemy, which had cost so much time, labor, and expense, besides the loss of so many lives, in the fine armies commanded by Saxe, Marlborough, and others.

I am, nevertheless, willing to act prudently upon the plan approved to the country, and continue their plans; yet, admitting the course to be correct, the number of military posts, and the points at which they should be erected, becomes another question. For my own part, in casting my eyes over the country, I cannot perceive that more than twenty-three or four, or, at most, twenty-five, fortified places are necessary; they are these which I hold in my hand, and disposed as follows: Maine, Portsmouth, Boston, Rhode Island, Connecticut, New York, Delaware, Baltimore, Norfolk, perhaps Old Point Comfort, North Carolina, Charleston, Savannah, St. Augustine, Pensacola, Mobile, the Mississippi River, Plattsburg, Niagara, Detroit, some arsenals and deposits. The fortresses on the seaboard might be taken care of by a portion of the infantry and the artillery; the residue might be distributed on the northern and western frontier.

There is, as I understand, a regiment at Sackett's Harbor, at this time, a force, in my opinion, too great for the post; part of that regiment could well be spared, or even a part of those now at the Council Bluffs, and posted at the mouth of Columbia or Oregon River, which would obviate any objection which might arise on that point.

If, however, this should be objected to, which I cannot perceive, from the fact that the army, small as some say it is, nevertheless is deficient by several hundred of its proper number, could be filled by enlistments for that service, or authority might be given to increase the army by law to two hundred common soldiers more, which, organized as our army is, could be done with perfect convenience, by adding a few men more to each company, and not cost more than, perhaps, two thousand dollars.

On the score of economy, this measure can be justified as the army now stands, to even a greater extent. The report originally presented to this House, contemplates also a post at the Mandan Villages, as well as at the mouth of the Oregon; troops at these points would relieve the necessity of intermediate posts, and not lengthen the line of defence; this would give greater security to the country, and, by diminishing the number of posts, diminish also the public expenditure.

It is, at all times, a disagreeable task for me to recur to the scenes which took place in the Western country thirty or forty years ago; none have so deeply suffered by those wars, agitated and produced by British agents and British traders; that country must be secure—these troubles shall cease—the trade ought to be our own.

The Western country, perhaps, fared as well as circumstances would permit; our Government, at the peace of 1783, was in a situation which disposed it to agree to almost any terms of peace which should recognize the independence of our country; I do not mention it in terms of reproach; on the other hand, they were wise and prudent. But the British were on better ground to negotiate; they provided for their trade; they knew well the value of the fur trade of the West, and the immense influence it gave her over the Indian, which, according to her avowed principles, she could use in war. That trade was demanded, and it was wholly surrendered to them. England has shown, in all her treaties, that she knew well the value of this trade, and, from the moment she got possession of Canada until the present time, she has cherished it; and, in her late treaty with us, she has displayed her sagacity and great knowledge of the subject, and the value of the trade of the Oregon. She has driven our citizens from that country; we can no longer trade there; and, by an arrangement with the East India Company, and South Sea Company, their traders are permitted to ship their goods from London and Liverpool direct to the mouth of that river. Our traders, on the other hand, have two shipments to make, paying a duty of from 25 to 37½ per cent., so that, when they come into competition with the Briton, he is only selling at cost that which the Englishman is disposing of at a profit equal to the duty paid by us; the occupation contemplated by this bill, with the aid of a Custom

House, at no distant day, would go far to remedy this evil.

It has been hinted by some, that the inhabitants of Oregon, in time, might become strong, and be disposed to separate from us. What, let me ask, could be the inducement to such a measure? With a vast power to the south and to the north pressing upon them, with no reciprocal interest, they would find themselves drawn more closely to the Union, supplying by their industry these powers, and finding an immense country to the east inhabited by their friends and relations, obeying the same laws, and taking from them many of the rich productions of the east, without an increase of expense. Besides, what has their local legislation to do with national affairs? What do we know of the legislation of Maine, or New Hampshire, or of Georgia? Do not our judges expound the laws of Congress as well in those States as in Maryland or Virginia? Would not a judge in Oregon do his duty as well as a judge in Missouri? Does it matter where, or in what place, the laws are made? What is the appearance of things when Congress adjourns, the President retired to his farm, and his Secretaries gone to their homes? All local or State affairs the people of Oregon could transact for themselves, as well as the States on this shore; their obedience to the laws of the Union would be the same; the interest of the people on that side of the Rocky Mountains would be identified with the interest of the people of the whole Atlantic coast, in a stronger degree, in my opinion, than Vermont and Louisiana, and will continue as long.

Notwithstanding this, suppose there should be a separate Government, and they become an independent people, is there any thing very shocking in this? Is it not in unison with our own principles to separate freely and peaceably, when the force of circumstances makes it manifestly necessary? And would it not be better to have our children there, than the Spaniard, Englishman, or the rough Russian? Surely, if we do not occupy it, some foreigner will, as so large, beautiful, and fertile a country, abounding in productions better in the rich markets of India and China, than silver and gold, cannot be left untenanted. Moreover, the law of nations, which we respect, would go far to justify them in taking possession of it. Would we, in that case, wage war to recover it? If so, that war would cost much more than the occupation proposed by this bill. Would you abandon it? Then say so, and let the enterprise of your citizens choose the course. Many now go to Mexico and to Canada, where they get land for the asking; the inducement to Oregon would not be confined to that poor prospect of a piece of land.

Mr. Chairman, this river must be occupied; so noble a stream, watering with its branches a tract of country from the 42d to the 58d degree of north latitude, and from the Pacific Ocean a thousand miles in the interior, with a climate,

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though north of this city several degrees of latitude, yet as mild as this, cannot remain unoccupied. This country, too, if there is a spot on the face of the globe destined to feel less of the calamity of war than another, it is this place: this, I should think, would be another strong inducement for its settlement.

All the wars which have agitated the world, have been in, or had their rise in Europe—all the wars we have had, and perhaps will have for ages, can only be from Europe. All the defences we have planned, and are planning, is to secure ourselves against the wars of Europe—from all this, Oregon will be comparatively freed. If there is a man, whose religion, or whose judgment or feelings disapproves of war, then let him settle in Oregon, where himself, and his descendants for ages to come, will be unmolested by the din of arms. Russia, from the situation of her capital, her commanding interests, and the mass of her population, will remain a European power—she cannot disturb us at so distant a point. The coast of Asia is too distant, too wild and unimproved, to become the seat of Royalty; and should war arise with that power, Europe and the Atlantic must feel its effects. Should England be the enemy, the result would be the same—that territory is too distant by sea to enable them to fit out any thing like a heavy force: wherefore, the danger of molestation would be small. From the coast of China, we know there is no danger. The experience of many centuries of exemption from war, has taught her the wisdom of peace. She will not, cannot war with us. From Mexico, Peru, Colombia, and Chili, there will be little danger; as the products of the two countries are totally different, we cannot compete in the market; and they have no timber to become a naval power: from that quarter we are safe. If, however, the Republic should be plunged in war, it must be on the Atlantic shore, where it can defend itself; that coast would ask no protection. The whole shore of the ocean is almost a perpendicular rock, only approached through the mouths of the rivers, easily secured, and easily defended, which leaves all at ease within, tranquillity and peace.

There is, Mr. Chairman, another point of view in which this subject presents itself, still more important to us, and one which ought to engage the most serious attention of the Republic.

This river is the largest which empties itself into the Pacific Ocean on the whole coast of America, or on the coast of Asia, as far, at least, as China. It has soil and timber to any extent, fine harbors, and much health. From this point, the whole Pacific Ocean can be commanded; and is the only point on the globe, where a naval power can reach the East India possessions of our eternal enemy, Great Britain. It is well known to every member of the House, that through all her struggles with Napoleon, and amidst all the gigantic schemes and exhaustless resources of that great man, her trade to India remained untouched and secure. It is

well known that he had planned a descent upon her East India possessions; but as he himself declared in his conversations with Mr. O'Meara, at St. Helena, a book all have seen, the truth of which, none doubt, that he was never able to accomplish it: because, on consultation with his ablest naval commanders, and on various calculations, he found that the fleet would be deficient, as he observed, in one month's supply of water. If, then, we secure the possession of Oregon, and avail ourselves of the fine harbors and ship timber which we know how to use, which fact, the English, at least, ought not to doubt, we take the strongest and surest security of Britain, for her future good behavior. She will be very cautious how she evinces that wantonness and injustice, and utter disregard of the rights of this Republic, which led to the last war with her, when she knows that, in thirty or forty days, we can, at any time, strike a blow on her East India possessions, which, of all others, she would feel the most sensibly and sorely. This would be a better guarantee for our future peace, than her faith in the observance of treaties, or her impressions of justice. We should, too, obtain the entire control of that ocean, where we have, even now, annually, eight or ten millions of property. Mexico, Peru, Chili, and Colombia cannot, and Britain, in those seas, must forever remain too weak to cope with us. We will be in good ports at home; they have all the dangers of a voyage round a cape proverbial for its storms, and two oceans, making a distance of perhaps thirty thousand miles. If, in any future war, a ship should be taken from the enemy in that sea, instead of burning it, or suffering it to rot, as was done by the intrepid Porter, we would have a near and safe port to enter, where all prizes could be secured, and, by a court of admiralty, the property changed, which could be sold to the merchants of any, or all of the powers below, or even to the Russians. This, then, gives us the command of that ocean, from the Bay of Bengal, to Cape Horn, and to Behring's Straits, Kamtschatka and Ochotak.

From this bill will result all these important considerations: We procure and protect the fur trade, worth to England three millions of dollars a year. We engross the whale trade, a most valuable branch of commerce, so plenty on that coast, that Portlock, an English navigator, states, that in 1787, when in latitude 57° he saw the ocean covered with whales as far as the eye could see. We control the South Sea trade, as it is called—the trade in seals, and in the islands of the Pacific. We must govern the Canton trade. All this rich commerce could be governed, if not engrossed, by capitalists at Oregon, making it the Tyre of America, to supply the whole coast below, and thus obtain the silver and gold of those rich countries on that coast, more valuable to us than the mines themselves; for the nation which works in iron, and labors in commerce, has always, and will forever, govern those who work in gold. Here is

a way, then, to supply the market of Canton with all it wants, without a dollar in specie from the Republic. What flour, and cotton, and tobacco, is taken from the United States, by ships in that trade, on what they call indirect voyages, are first disposed of in Europe or the Mediterranean, for silver, opium, &c., and these are shipped to China, where the opium is better than silver. The ginseng of the Oregon, the fur of that river and that sea, with sandal wood, and other valuable productions of the islands, will purchase all we want, not only to supply our own wants, but to dispose of in Europe, and return the proceeds to our own country. Much can be taken to Oregon, and from thence, shipped to the Governments below, or furnished to the merchants of Mexico, Guatemala, and others, as they may find it convenient to apply for them, by so short a voyage—from ten to twenty-two days.

The trade to Canton has never been properly regarded by us; when viewed in a proper light, it is of great value to the United States, and ought to be cherished, or, as sometimes happens, the best thing that can be done, is, to do nothing; and this is emphatically one of these cases. If proof of this were wanting, it would only be necessary to compare our commerce with Great Britain. Her East India Company, her South Sea Company, and other charters granted to monopolists, will, if persevered in, ruin their country, or soon rank them below the United States, or give employment to many tons of American shipping; to carry that which their own subjects cannot do.

The idea has been pretty generally spread abroad, that nothing is taken in the Canton market but gold and silver, ginseng, and furs. This I explained on a former occasion, that, owing to the bulk and low prices of bread stuffs, &c., and their liability to spoil from so long a voyage, through a hot country, that they would not pay the expense of freight. But, from the mouth of this river, the voyage is short and safe, which will afford a good profit for flour, and all other articles the products of agriculture. Cotton, too, has been sold there for a good price; broken glass, leather, gin, brandy, and candles. What a prospect for the tanner! in a country abounding in timber, of oak and spruce pine, affording bark of the best quality, as containing much of the tanning principle, with skins in inexhaustible abundance from the plains below.

If the House will indulge me a few minutes, I will now make some exposition of the whale trade, and the trade to the Western Ocean. For all I shall say, I have the documents in my hand, and if there is an error, it is, I know, in making the exposition less than the real fact; but I deem it prudent to present the least favorable view it is susceptible of. It is proper further to observe, that this part of the subject may be better understood, that the number of vessels here stated, regards the departures and arrivals each year; though it is believed that

in some years there may be more at sea than in other years, which, of course, would not be noticed that year, which may, on the other hand, be counterbalanced by the arrival of a vessel which that year cleared; yet it is pretty accurate.

In the year 1819, there cleared from Boston, 8 ships, engaged in the whale fishery, and commerce of the Western Ocean, &c. The tonnage of these ships amounted to 2,171, navigated by 164 seamen. Their particular places of destination were Ohili, Lima, Valparaiso, Sandwich Islands, Western Coast, &c. New Bedford, twenty-eight ships, tonnage 7,879, seamen 552. Edgartown, fourteen ships, tonnage 3,908, seamen 281. Newport, one ship, tons 366, seamen 23. Providence, three ships, tons 520, seamen 27. New London, four ships, tons 845, seamen 74. New York, one ship of 168 tons, and 21 seamen. There entered that year, 83 ships, 7,968 tons, and 557 seamen, making 118 ships, 20,428 tons, navigated by 2,199 seamen. In the year 1820 there cleared 108 ships, 25,118 tons, navigated by 2,068 seamen; and arrived 58 ships, 18,581 tons, and 946 seamen, making 161 ships, 33,649 tons, and 3,009 seamen.

In 1821 there sailed 162 ships, tonnage 41,550, navigated by 3,192 seamen. There arrived that year, 53 ships, 12,908 tons, seamen not known, making 215 ships, tonnage 54,450. In 1822 there sailed 161 ships; tonnage 43,515; seamen 3,174. There arrived 80 ships, tons 18,127; there is no note of the seamen who entered, save 180 in New York; making that year, 241 ships, tons 61,612. In 1823, there sailed ninety-five ships, tons 25,079, and arrived 80 ships, tons 20,833; making 175 ships; seamen not ascertained. In the year 1817, it is to be remembered, there was brought to Nantucket, by 28 ships, tonnage 5,153, and 409 seamen, 5,771 barrels of whale oil; 15,401 barrels of spermaceti; 6,818 of head matter; 19,444 of whale bone. In 1818, brought by 21 ships, 384 seamen, 5,492 tons, 13,426 barrels of whale oil; 10,496 spermaceti; 4,878 head matter; 65,448 whale bone. In 1820, there were 21 ships, 5,249 tons, and 891 seamen, bringing 11,687 barrels of whale oil; 11,885 spermaceti; 5,027 head matter; 59,794 whale bone. In the succeeding years it was much the same. One of the vessels arriving in 1823, reported a list of 86 ships then in the Western Ocean, though they did not know of any cargo, except 85,200 barrels of whale oil.

I have the authority of a respectable newspaper for saying, that, within the period of three years, viz., in 1820, '21, and '22, there arrived at Nantucket, 2,101,292 gallons of spermaceti oil; and, for the same three years, at New Bedford, 1,407,797 gallons, this being but one item in the trade. During these years there went to Canton, in furs and sandal wood, from that coast and sea, including some fur likewise shipped from N. York, that which sold for the incredible amount of 1,494,397 dollars!

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*Occupation of the Columbia River.*

[H. OF R.]

There was exported to that sea, in that year, 17,554 dollars' worth of domestic fabrics, and 9,417 of foreign merchandise. To the Western Coast, 118,946 domestic and 198,868 foreign merchandise. We have, from the year 1805 to 1822, inclusive, shipped to the Pacific, in domestic and foreign merchandise, 520,295 dollars; and, to the Western Coast, in the same articles, for the same period, 4,557,078 dollars; making 5,077,371 dollars; yet, by this trade we obtain the valuable furs, sold for such enormous amounts in China; our exports to that coast amounting, in twenty years, to 5,077,371 dollars.

Why should we not protect and cherish this trade? Was there ever a nation on earth which bought so much, with so little? The fisheries, which have occupied so large a space in our negotiations for many years, only yielded us, in the year 1816, the sum of 1,881,000 dollars, employing — tons of shipping; this also included — tons of shipping engaged in the whale trade.

Under this view of the subject, I think, Mr. Chairman, you will agree with me, that "our interests on the Pacific Ocean are not so *minute*" as to be unworthy of investigation, as has been said in a recent negotiation, by a personage in no very subordinate station. This trade, yielding such vast sums upon the capital and labor employed; giving employment to 45,000 tons of shipping, and upwards of 3,000 seamen; ought to be looked to with care, and fostered with solicitude. Besides bringing us great wealth, it is the finest nursery for seamen in the world. An ordinary whaling voyage is from two to three years. I have it from authority that cannot be doubted, that ships have been absent for four or five years, and, in one instance, even seven years; it is this which makes the real seaman.

But, sir, why should we not have our own ships built on that sea, and fitted out from our own port on the Oregon? Why send ships of war from this coast, from Washington City, to cruise in the Pacific Ocean, when we can there build them, and keep on that coast a fleet, for that ocean?

Much has been said concerning the difficulty of establishing the post, and subsisting those who might embark in the enterprise. It is true, we will not, for a few years, find as much wealth and splendor as is found in the saloons and drawing-rooms of this magnificent counterfeit of European royalty; neither would we find what is very common here, a heartless intercourse, and aping etiquette of miserable pretenders to the "monthly fashions, just from Europe."

First, As to subsistence. I think myself well justified, from the concurrent testimony of all travellers and voyagers; in stating, that the salmon of the Oregon River alone, would subsist fifty thousand men a year. The potato grows wild there, on which the natives feed, not only those who live on the river, but those of the

neighboring nations. Portlock and Dixon say, and their testimony is strengthened by Messrs. Lewis and Clarke, that the gooseberry is to be found there in abundance; so is the red and black currant, strawberries, mulberries, raspberries, onions, and peas. Portlock also states, that, high up that coast, a shrub is found, the leaves of which is so good a substitute for the tea of China, that he could hardly tell the difference. Moreover, wheat, and all kinds of grain, can be had in a few days from Mexico, at very reduced prices. Hogs, sheep, goats, black cattle of every description, can be had, with ease, and in abundance, in a short time, from California, or the Sandwich Islands. The difficulties to be overcome in a voyage or journey to that country, are ideal, and for some years unknown to the enterprising citizens of Missouri, who, I had almost said, were daily in the habit of planning and executing trips to Oregon and to Mexico, yielding a profit in furs, peltries, money, and mules, beyond any thing known to us. The journey is safe and easy, and requires, from Franklin, in Missouri, the space of fifty days, by their present slow mode of travelling, to perform the trip. So frequent are their journeys, that I should almost feel myself justified in saying, that there is a constant intercourse between Missouri, Mexico, and Oregon.

Much of the reluctance which is felt by gentlemen, arises from a recurrence to the difficulties experienced by Messrs. Lewis and Clarke, when visiting that coast; their difficulties proceeded, not from the country, but from their entire want of knowledge—which is now possessed, gained by a residence among the Indian nations who inhabit the country near the Oregon mountains.

The course now travelled to pass those mountains, lies far to the south of that formerly travelled, and a journey can now be made without meeting any obstructions of a serious character. Much of this information has been imparted by Mr. Farnham and Mr. Crooka, gentlemen to whom I am much indebted for many interesting facts relative to this country, who have had an intimate knowledge, from having been there engaged in the trade of that country with John Jacob Astor, who is well known for his skill, experience, and extensive knowledge in the fur trade, and is ready to vest in that pursuit, several hundred thousand dollars, fixing his establishment at the mouth of the Oregon, so soon as this republic will extend to her citizens the same protection which even the Kings of Europe, particularly England, grant to their subjects. I am also informed, that other large capitalists in the Western country, and in Virginia, are willing to embark in the same pursuit; among these may be named Louis A. Tarascon, of Shippingport, Ken., known in Bordeaux and Philadelphia as one of the most accomplished merchants; who has been among the first to open the trade from the Ohio to the West Indies, and built the first ship which descended that river, for that purpose, and whose

commercial views have been useful, and deserve the most respectful attention of the Government.

The great difficulties which Lewis and Clarke met with, induced adventurers to search for a more practicable route, which was soon discovered, to the south of that pursued by these early travellers. Others went still further southwardly, and continued up the Yellowstone River, taking the fork of that river, called the Big Horn, pursuing it to its source, thence through the mountain, falling upon the waters of Lewis River, one of the principal branches of the Oregon. At this point the waters interlock; and present very few difficulties, as the whole chain of mountains differs from those known on the Atlantic shores, inasmuch as the mountains here are composed of one unbroken chain; they are composed of a number of detached hills, though large, and of great height from the base to the summit, resembling a chain of tumuli; through these you pass with ease and safety, so much so, that I have the most perfect confidence, that even now, a wagon, with its usual freight, could be taken from this capital to the mouth of Oregon.

I shall, Mr. Chairman, close the few remarks I have to make, by an appeal to the House, to consider well our interests in the Western Ocean, on our Western Coast, and the trade to China and to India; and the ease with which it can be brought down the Missouri. What is this commerce? Has it not enriched the world? Thousands of years have passed by, and, year after year, all the nations of the earth have, each year, sought the rich commerce of that country; all have enjoyed the riches of the East. This trade was sought by King Solomon, by Tyre, Sidon; this wealth found its way to Egypt, and, at last, to Rome, to France, Portugal, Spain, Holland, England, and, finally, to this Republic. How vast and incomprehensibly rich must be that country and commerce, which has never ceased, one day, from the highest point of Jewish splendor, to the instant I am speaking, to supply the whole globe with all the busy imagination of man can desire, for his ease, comfort, or enjoyment! Whilst we have so fair an opportunity offered, to participate so largely in all this wealth and enjoyment, if not to govern and direct the whole, can it be possible that doubts, on mere points of speculation, will weigh with the House, and cause us to lose forever, the brightest prospect ever presented to the eyes of a nation?

I will conclude my observations on this important subject, with one other remark, which I beg the House to bear in mind, and give it such weight as it deserves. The idea of extending our military frontier, or posts, to the mouth of that river, seems to have created alarm in the minds of some gentlemen; but, when it is well considered, all cause of fear will vanish. It is not so important as to the number of military posts, as it is that they should be properly placed. I am thoroughly persuaded, that Eng-

land governs the commercial world more by the advantageous positions she occupies in it, than by her physical strength or powerful marine. In addition to the strength which she derives from her insular position, which is as a bastion to the coast of Europe, she has Gibraltar and Malta, and other islands in the Mediterranean, which hold all Europe in check. On another side, she has a position in the West Indies, in Africa, in India, and the South Seas; all chosen with the same intent, and all in completion of her schemes; she wants nothing now to give her the entire control of all the commerce of the world, for ages to come, but a position on our Western Coast, which she will soon have, unless you pass this bill.

Mr. POINSETT, of South Carolina, offered an amendment to the bill, the effect of which would be to leave it discretionary with the President *at what point* on the Pacific the military post should be established, and supported his amendment by some remarks, the substance of which was understood to be, that the information in possession of the mover, as to the geographical and topographical advantages of the position at the mouth of the Oregon, was adverse to that just laid before the House by the gentleman from Virginia, (Mr. FLOYD.) He was not very confident of the accuracy of either, and thought it best to leave the matter to the President, who was, or doubtless would be, in possession of the best intelligence which was to be had in the case.

On motion of Mr. TRACY, of N. Y., the day being somewhat advanced, the committee then rose.

Mr. COOK moved to discharge the Committee of the Whole on the state of the Union from the farther consideration of this bill, with a view to its reference to the committee to whom so much of the President's message as refers to this subject had already been committed. This course appeared to him to be proper in itself, and, particularly so, as there were manifest defects in the bill, which made it advisable that it should undergo revision by a committee.

Mr. TENNILE, of Kentucky, felt some regret that the motion of the gentleman from Illinois had been made. He did not see the necessity for it, even to the attainment of the mover's own object, and there was, in the meanwhile, a weighty reason why the House should act upon the bill at the present session. The bill had, as had been observed, two leading features—first, the establishment of a military post, and, secondly, the establishment of a territorial government at such time as the President shall judge it to be proper. The object of the gentleman from Illinois would be fully answered by striking out the latter feature, to which alone his objection seemed to apply; for, certainly when he talked of sending topographical engineers to survey the country, he did not mean to turn those gentlemen out defenceless among savages: he would surely send a military force of some description to accompany and protect

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*Remuneration to General Lafayette.*

[H. OF R.]

them. But it was needful that the House should act upon the subject, and for this reason: By the terms of the British treaty, England and the United States are to trade in common throughout that country; and the treaty stipulates that the rights possessed by each at the time of the treaty, are to remain as they then were for fourteen years. Now, it was well known that an agent of the American Government had gone round to Astoria, the settlement at the mouth of the river Oregon, immediately after the conclusion of peace, and demanded that the British flag should be lowered and the American flag hoisted, as a signal of the possession of that part of the coast. Well, said Mr. T., the lion accordingly came down and the eagle went up; but, no sooner did the American agent turn his back, than down went the eagle, and up went the lion again. Under such circumstances, we made the agreement contained in the commercial treaty; and, if we shall leave the territory in possession of Great Britain until the fourteen years shall run out, at the end of that time it will be hers by right of possession, and she may expel our traders, &c. The possession which may now be obtained and secured by a small military force, say of two hundred men, may not, after that time, be obtained by a much larger force, and at a much greater expense. He was, therefore, opposed to the recommitment of the bill. Whilst up, he begged leave to return his thanks, those of the people whom he represented, and, he believed, of a great portion of the American people, to the gentleman from Virginia, (Mr. FLOYD,) who had so long, and with so much assiduity, labored to collect and present facts for the information and guidance of the House, in a matter of so great national importance as that which was now before it, and which he had at successive sessions brought forward.

The question was then put on Mr. COOK's motion to recommit the bill, and lost by a large majority.

And then the House adjourned.

TUESDAY, December 21.

*Remuneration to General Lafayette.*

Mr. RANDOLPH moved that the orders of the day be dispensed with, in order to take up the bill concerning General Lafayette. Mr. BRECHER hoped the House would not consent to do so—but, the question not admitting debate, it was put, and carried by a large majority.

The House accordingly went into Committee of the Whole on that bill, Mr. MARKLEY in the chair; and the bill having been read,

Mr. CAMPBELL, of Ohio, rose, and said, that it might appear uncourteous in any gentleman to oppose the passage of a bill having such an object as that now before the committee; yet, under present circumstances, brought in as that bill had been, suddenly upon the House, and called, as gentlemen were, to act upon it, without the opportunity of consultation, or a mo-

ment's reflection, he felt it to be his duty to oppose its farther progress. This might, perhaps, be considered as his reproach; but he felt it to be his duty, and he must fearlessly discharge it. He could have wished that the gentleman who introduced the bill had cultivated a little more of the virtue of patience. He did expect that, in presenting such a bill to this House, the merits and claims of the individual for whose benefit it was intended would have been stated, and the reasons which had induced the committee to fix upon this amount of compensation would have been disclosed. He was far from being insensible to the merits of that distinguished individual; and if, upon a deliberate statement of all the facts of his case, he should be convinced that his claims, even to such a large amount of remuneration, were founded in justice, he would go as far as any member of the House in allowing them, and in voting an appropriation. Whatever might be thought of his present conduct, Mr. C. declared that he was neither insensible to the services of General Lafayette, nor ungrateful for them; but he disapproved of the manner in which the bill had been attempted to be hurried through the House; and, though he might not succeed in preventing its passage, he should certainly, in this public manner, enter, for one, his protest against it.

Mr. TRACY, of New York, then rose, and observed, that it must now be evident to all, that there existed in the House a difference of opinion as to the form of the measure proposed by the bill. To the measure itself, he was persuaded, no gentleman on that floor was opposed, and he presumed that the friends of the bill, as reported, would not think, under such circumstances, of pressing the bill through the House while the minds of members were in a state so unprepared to act with unison upon the subject. He confessed, that to himself it had appeared somewhat extraordinary, that a measure of this kind had been introduced and pressed with so much precipitancy. For his own part, he would not say that he was either in favor of the bill or opposed to it in its present form. He had deputed to no committee the right of graduating his feelings on this subject, nor would this House submit to have the measure of its gratitude dictated to it by any committee. It must have time to think and to act for itself. Such time had not been given. He would not say the amount was too large—others might think it was, and others, again, might consider it too small: opportunity must be allowed to gentlemen to express their views. No committee could gauge in a moment the feelings and sentiments of the House on such a subject, and he was opposed to such precipitate legislation. Our judgment, said he, is to be consulted as well as our feelings—and, hoping that the friends of the bill would themselves be sensible of the impropriety of attempting thus to hurry it through the House, he should move to lay the bill upon the table.



The question was taken on Mr. TRACY'S motion, which was carried in the affirmative—ayes 98, noes 84.

So the bill was laid upon the table.

*Settlement of the Northwest Coast.*

On motion of Mr. FLOYD, of Virginia, the House went again into Committee of the Whole, on the bill "for occupying the mouth of Columbia River," Mr. A. STEVENSON in the chair.

The amendment offered yesterday by Mr. POINSETT, to insert, after the clause which empowers the President "to erect a fort on the Oregon River, in the region of tide water," the following, viz: "or at such other point as, after an accurate survey of the coast and adjoining country, shall be found most advantageous for the establishment of a military post," was again read, and adopted; when the committee rose, and reported the bill as amended.

In the House,

Mr. BUCHANAN moved to strike out the 4th section, which is as follows: "That the President be, and he is hereby, directed to open a port of entry within the said territory, whenever he shall deem the public good may require it, and shall appoint such officers as may be necessary for the same; after which, the revenue laws of the United States shall extend to, and be in full force in said territory;" to which (though on all other grounds highly approving it) he objected, as interfering with the treaty with Great Britain. By that treaty, a free and open trade is guaranteed, in common, to both powers, for a certain term of years, which is diametrically in opposition to the establishment of a port of entry, and the consequent demand of duties from British traders to the Oregon.

Mr. GAZLAY thought that, as the treaty was the supreme law of the land, the establishment of a port of entry would only cause duties to be collected from other powers, the treaty stipulation protecting the trade of Great Britain from those duties.

Mr. FLOYD explained. The gentleman would perceive, if he looked once more at the section, that the establishment of a port of entry was only to take place, when the President shall "deem that the public good may require it." It did not interfere with the enjoyment of an equal trade by both parties, during the period stipulated by the treaty, but was intended to put our citizens, as early as possible, on an advantageous footing for the prosecution of commercial enterprise.

Mr. TAYLOR, of New York, then rose, and moved to amend the bill by striking out the whole of the 5th section, [which empowers the President to appoint a Governor, Judges, &c., for the territory, and defines their powers, emoluments, &c.] He approved of that part of the bill which provides for the establishment of a military post, but he thought that the erecting of a territorial Government was matter of

high legislation, which the House should not put out of their own hand, without special and urgent reason. He saw no such reason in this case. A territorial Government would not be wanted on the river Oregon for many years to come, and would be attended, at present, only with unnecessary expense.

Mr. SMYTH, of Virginia, addressed the Chair, and said, that he had intended to offer some amendments to the bill, which, that his object might be understood, he would now read to the committee. [These were to strike out all the sections except the second and last, and to amend the second, so as to authorize the President to occupy "the territory of the United States on the Northwest Coast of America," without giving it a name as one of the *territories* of the United States.] It might, he said, be expected that he should explain why it was, that he, though chairman of the committee on that part of the President's message which relates to this subject, had not convened the committee. He thought it due to his friend and colleague, (Mr. FLOYD,) who certainly would have been appointed chairman had he been present, who had, with so much industry and ability, investigated the subject, that he should take the lead in bringing it before the House, and that it should be decided on his bill and report, already in possession of the House. I have (said Mr. S.) some remarks to make which may be now properly made, on the motion to strike out the 5th section of the bill. My colleague has shown the expediency of establishing a military post; but I differ with the gentleman from Kentucky, (Mr. TRUMBULL,) as to the expediency of establishing a post at the mouth of Columbia River. The surrender of the post at that place, to our agent, at the close of the war could not affect the right of either nation. The surrender was made in compliance with a stipulation of the treaty of peace, that all places taken by either party during the war, should be given up; but it left the question of right to the territory undecided. Great Britain has, at this moment, a military post on the Columbia River, which, under the convention, I presume, she has a right to retain until the expiration of the ten years. The spot whereon a British post is now situated, is a very improper one to select for placing one of ours. I therefore approved of the amendment offered by the gentleman from South Carolina, (Mr. POINSETT.) But the principal question to be now settled is, Shall the plan of my colleague, to establish a territorial Government, be adopted? or, Shall we adopt the proposition of the President, to establish a military post only? This question ought to depend on the answer to be given to another. Do we contemplate the eventual establishment of a State Government on the Northwest Coast of America? This depends on another question of importance, and worthy of serious consideration, to wit: Where shall the western limits of the United States be fixed? I do not mean the limits of their terri-

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tory or the extent of their power. We may have establishments on distant shores; but where shall the limits of the States, the members of this confederacy, be fixed? The institutions of nations should be adapted to their extent, and other circumstances. The federative system offers advantages for governing well an extensive nation; but there is some limit, beyond which it should not be extended. It will not be contended, that this system of government is adapted to include the whole earth, nor the whole continent of America; perhaps not even the whole of North America. There was evidently a limit to it, in the very nature of things. The representatives of the States and people, under this system, must meet together once a year for the purpose of legislation; and the confederacy might be so extended that this would be impossible. All the institutions of this country depend on the will of the people, and cannot exist a moment but by the approbation of a majority. Our system may be properly extended to include all who have a mutual interest in remaining united; but no further. Beyond this there is no bond of union sufficiently strong to keep the confederacy together. He conceived that this principle of union from mutual interest, might bind together all those who inhabit the waters of the Mississippi; as their products would seek one seaport; and that country would be bound to the Atlantic States, by commercial interests, and especially for naval protection. But I apprehend, that if this union included Mexico, it would be dissolved by mutual consent to-morrow. There would be no tie of mutual interest to hold us together. The exact point to which the confederacy might be extended, for the mutual advantage of all, it might be difficult to ascertain. Perhaps we may safely include one or two tiers of States beyond the Mississippi; but, in my judgment, we ought not to extend our federative system further; and I would particularly recommend it to the gentlemen who represent the Atlantic States, to consider the possible effects of a further extension, when the Western States shall become filled with people.

There is another consideration to be taken into view. We have a considerable Indian population, which it is not intended to exterminate. We have a large population of another description, which it is not intended to exterminate. These, on failure of other plans, might be removed to the country beyond the limits of the States, and let the population of the States be homogeneous. On the whole, I think that, if a line is drawn far enough beyond the Mississippi, to include two tiers of States, it might be wise and proper to declare it unchangeable. Those beyond this line might be in alliance with us, or under our protection, and live under Governments of their own, suited to their circumstances, but form no part of our confederacy. The effect of a too rapid increase of States, and bringing too much land into mar-

ket, is already severely felt by the old States on the seaboard, which are perpetually drained of the flower of their population. That must continue to be so, and the evil will increase, the further we extend our limits. If we open, on the western coast, a fertile country, offering temptations to emigrants from among us—it will carry off many of our enterprising and valuable people; the country will rapidly increase in population, until it will drop off and become a separate nation.

All that was asked for by the President, was the sanction of Congress to the establishment of a military post. He did not ask for an appropriation of money, and it was not important whether it was made or not. The measure recommended by the President would be a proper one—possession would strengthen our claim in our negotiations with foreign powers. In our arrangement with Russia, we gave up all claim to the country north of 54 degrees 40 minutes. Perhaps we might have justly claimed as far as the 58th degree north. We have succeeded to the claim of Spain, who held by the right of first discovery. Humboldt, who, when at Mexico, investigated the subject, speaking of the voyage of discovery the Spanish navigator Perez made in 1774, he says, "On the 9th of August they anchored, the *first of all the European Navigators*, in Nootka road, which they called the port of *San Lorenzo*, and which the illustrious Oook, four years afterwards, called *King George's Sound*." He also tells us, that, in the following year, 1775, the Spanish navigator, *Quadra*, discovered the mouth of the Columbia River, and Mount Edgecumbe; and he adds, "I possess two very curious small maps, engraved in 1788, in the city of Mexico, which give the bearings of the coast from the 17th to the 58th degree of latitude, as they were discovered in the expedition of Quadra."

Sir, (said Mr. S.,) let the post which we establish, be purely military; a navy yard might constitute a part of the establishment. So far I deem it wise and fit to go; but let not our citizens be invited to that country by grants of land, or the expectation of a State Government being established there.

The question was then taken on striking out the fifth section of the bill, and carried.

The question then recurring on the amendment offered by Mr. A. SMYTH—

Mr. FLOYD rose in reply to the remarks of that gentleman. He recapitulated some of the reasons before urged by him, against placing the numerous and mixed population on the Oregon River, under the control of a military commander. He appealed to the gentleman himself, (one of the most uniform republicans this country had ever seen,) whether it was possible that so many ships, with their crews, stopping, and refitting, &c., at the post to be established, involving the interest of a property afloat of ten millions, a mass of 1,000 or 2,000 traders, farmers, and fishermen, would, with propriety, be placed under the despotism of

military law? He had all due confidence in the officers of our army; but he knew it was so easy to feel power and forget right, that he did not like to confide too much to them. So difficult was it for citizens to conform themselves to army regulations, &c., no American would submit long to be put under martial law. As to the danger of erecting distant States, Oregon was not further from the seat of Government under the improvements of navigation, &c., than Louisiana was when she was erected into a State; and not much further than Maine is; and he knew no reason why Oregon should be less attached to the republic. He was very sure that her interest bound her to us, especially in a time of war.

It mattered little, as to the obedience to the laws, in which State the place was situated where they were made; and he believed it would puzzle even a skilful lawyer to say in what State our laws are made at present. He dwelt on the value of the China trade, and the whale fisheries—and contrasting this with the appropriation called for by the bill, he took occasion to state that he had received a letter from a merchant of high standing and large capital in Boston, who had examined the estimates on which the sum in the bill had been predicated; and, although he pronounced them not too high, considering that Government must charter the vessels to be employed, he offered to transport what was necessary at a price considerably less; which he could afford to do, because he already owned a number of vessels in the Northwest trade. As to the danger of spreading our territory, and of the future State of Oregon separating from the confederacy—suppose it should be so? What then? Was it not better that this tract of country should be settled by us than by foreigners? And did the gentleman suppose that all the nations of the earth could stand by and see the vast region to the west of us, lie for centuries unoccupied? If we did not take possession, they would; and, by the law of nations, they would have a right to do so. If we forbade them, and they disregarded the prohibition, we must go to war with them; so that the gentleman's argument was as broad as it was long. Unless the territory was our own, we might look for war at any rate. It was, besides, of importance to give this vast country the blessings of free government. Even the patriots of the South found it hard to teach their people how to be freemen—and as to the Russians, he had long believed that, with them, the thing was simply impossible. Let the population of the West be free from the outset.

Mr. SMYTH now withdrew his amendment, and, instead of it, offered another, which was, to strike out the whole of the third section, [which offers bounty land to settlers in the territory.]

The motion was opposed by Mr. TRIMBLE, of Kentucky, who said that the section proposing to establish civil government in the Oregon at

a future day, was not very essential, and he had voted to strike it out, under a hope that the other features of the bill would be more acceptable. The present section, though not absolutely necessary, ought, in his opinion, to be retained; and he would assign one or two plain reasons in its favor. But before doing this, he would ask leave to correct his friend from Virginia, (Mr. SMYTH,) in his construction of the treaty of Ghent. He says that the treaty left the rights of the parties as they were before its date; and so far, agreed. But he says further, that the British are now in possession, and have therefore a right to hold the country until the expiration of the ten years stipulated in the treaty of London. If this is true, it would follow that the treaty has reversed the rights of the parties; and the gentleman's construction of it will place the interests of this Government in a most perilous predicament. Let me show him, said Mr. T., how our rights stood before the treaty, and how they will stand in October, 1828, if his view of the subject is correct. We claimed the country before the late war, England claimed it, and Russia claimed it. Their titles were, of course, mere pretences. We sent out Lewis and Clarke to explore the country, and make a demonstration of our right, and our intention to occupy and hold it. Not long after they returned, our fur traders went out across the mountains, and around Cape Horn, and took possession near the mouth of the Oregon or Columbia River. In 1810, a town, consisting of a few trading houses, was built there, and called Astoria. After the late war was commenced, the British traders, aided by the Indians, drove our traders from the country, and held it and traded there until the treaty of Ghent. By that treaty, a mutual restoration of rights and territories was stipulated, except the Grand Menan, and the islands in Passamaquoddy bay, the sovereignty of which were agreed to be in contest. In pursuance of the treaty, Mr. Prevost was ordered up from Lima, as agent of the United States, to receive possession from the British. He arrived at the mouth of the Oregon River, on the 1st of October, 1818, and on the 6th, took possession of the British post near the bay. It was surrendered in due form, but not without a protest by the English settlers against our right to take it. Mr. Prevost sailed on the 9th or 10th of the same month, and as soon as he left the river, the British flag was again hoisted, and the country occupied as British territory. This must have been about the 10th of October, if we may believe Mr. Farnham and Mr. Crooks, both of whom are men of veracity. On the 20th of October, the treaty of London was signed, so that in point of fact, the British were in actual (though wrongful) possession of the country when that treaty was concluded. The treaty declares "that any country claimed by either party, on the Northwest coast of America, west of the Stony Mountains, shall, together with its harbors, bays, and creeks, and

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the navigation of all rivers within the same, be free and open for the term of ten years, from the date of the convention, to the vessels, citizens, and subjects of the two powers. It being well understood that this agreement (the treaty) is not to be construed to the prejudice of any claim which either of the two high contracting parties may have to any part of the said country." And now, the important question is this: What will be the practical result if we leave the British in possession until the *ten years* are ended? That Government may then hold this language to us:—Your mutual right of trade and navigation has been accorded to you, and you have enjoyed it for the full term stipulated; but now the rights of both parties are remitted back to their actual condition at the date of the treaty of London. At that date, (Oct. 20th, 1818,) we were in possession, and your mutual privilege being now ended, you must cease to trade with the Indians, or navigate these waters, until the King shall grant you a renewal of the favor in another treaty. Thus our rights will cease at the end of ten years; and, instead of our people having the *exclusive* right to trade there after October, 1828, we shall be excluded from the trade entirely. This shows that the practical effect of the gentleman's construction of the treaty will be, to place our rights on that coast, and in that territory, on the footing of a lease for ten years, after which they are to cease unless renewed; whereas, if we take possession now, as we ought to do, and have a clear right to do, the rights of the British traders and navigators there, will cease in October, 1828. The establishment of a military post, therefore, to occupy the country, is of the first importance to us, because it revives and brings forward our rights, as they were before the treaty. The real state of the fact is, that England has only the *color of claim*, but to this she has wrongfully superadded an *actual* possession, and we must speedily re-occupy the country, or we shall have to treat for its reclamation at an obvious disadvantage.

So much for the treaty, he said, and now for the bill. By the establishment of military posts at the mouth of the Oregon, and on the bay of St. John de Fuco, we may command the trade of China, Japan, the East Indies, and the North Pacific. That ocean is the richest sea in the world, and is as yet without a master. He would not discuss the value of the trade there, nor speak of it as a nursery for our seamen. It was enough to know that, for the last 800 years, the nation that has held the control of the East India and China trade, has had the supremacy of naval strength and maritime power. But, said he, that side of the subject belongs to our exterior interests and foreign policy, which I do not intend to examine. I wish to look at it only as a question of domestic regulation and interior police. The proposed military post, with trading houses in the territory, and in the Rocky Mountains, will com-

mand the fur trade, and we all know that the fur trade and the fur traders will command the Indians. The fact is proven by experience. This consideration, the best and surest way to preserve peace with the Indians, must, for the future, be a primary object in framing our territorial regulations, because we are about to make a radical change in our Indian policy. The President, we recollect, has called our attention to the subject, and has suggested a new system. Formerly, our policy was to *separate* the tribes, thrust our settlements between them, disunite them, and treat with them as independent nations; but now we are called upon to consolidate the tribes, *embody them*, and concentrate the entire united mass upon some portion of our western territories. This may be a wise scheme. It deserves serious consideration; but whether it be good or bad policy, if we embody the Indian tribes upon our western frontiers before we acquire the exclusive control of the fur trade, we shall have to embody an army to protect our settlements and look down all hostilities. This was Tecumseh's scheme of Indian policy. He was the inventor of it, and doubtless, under the direction of a chief like him, it would increase their power tenfold, and give new vigor to their hostile councils. Col. Dixon embodied some tribes last war upon the same plan, and so did Tecumseh; and we all recollect the impression they made upon our frontiers, and the destructive and distressing results, wherever they assailed us. If we adopt this new scheme of policy, we must begin by securing the exclusive command of the fur trade; we must disperse our traders throughout all the trapping districts. The fur traders are the best peace-makers; because they unite with the Indians, and form a common bond of interest. The first step in the introduction of this new system, would be to establish a military post in the Oregon territory, to protect the traders. But would that be enough? Could the soldiery discharge their military duties, and at the same time provide subsistence for themselves, and the concourse of traders and Indians who would assemble near them at particular periods? Such a post ought to be surrounded by a hardy population to till the ground, and provide the necessities of life in abundance, and thereby give confidence to the people, and durability to the settlement. If you locate a mere post there, without an auxiliary population to sustain it, some artful trader, jealous of our growing interests, and of his diminished profits, will not fail to bring down the Indians on the fort, and invest it, and we shall hear of nothing but sieges and massacres. And after all, what is the value of the land proposed to be given as a bounty to the first settlers? In that remote region, the land as yet is worth nothing; it has no value. The gentleman from Virginia fears that we shall spread too far, and hopes that the limits of the Republic will not be extended beyond the Rocky Mountains. Those who observe nations

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from their closets, and look at men and things through the medium of books, may throw out useful hints, and make wise observations; but it is practical men alone, that are relied upon to manage the affairs of nations. What may be the fate of the Federation if it should be extended beyond the Stony Mountains, and what good or ill fortune may betide the people of the Oregon two centuries hence, does not concern us much just now. Doubtless, posterity will know how to take care of itself, and provide for its own dangers, as we do for ours. The period is too remote for legislation; but, in the meanwhile, give your people the bounty land, and let them go and make a settlement and form a nucleus, around which other emigrants may collect, and time will gradually consolidate them into a powerful community, and your treasury will be relieved from the annual expense of maintaining the proposed military post.

A motion was now made for adjournment, and, being carried,

The House adjourned.

WEDNESDAY, December 22.

*Claim of Maison Rouge.*

The resolution, offered by Mr. BRENT some days since, in relation to the claim of the representatives of the Marquis de Maison Rouge, to refer that claim to a committee, was taken up.

Mr. BRECK spoke in opposition to the resolution, on the ground that the claim in dispute had been submitted by Mr. Cox, the present holder of the vast tract of land concerned, to a judicial tribunal; in which case, he thought all legislative interference, on the part of this House, would be highly improper. Mr. B. stated a number of facts, in support of this view of the case.

Mr. CAMPBELL, of Ohio, (Chairman of the Committee on Private Land Claims,) replied to Mr. BRECK; and understanding that the suits instituted by Mr. Cox, are only against persons settling on the land without any title at all, (squatters,) thought that these suits, however decided, could not settle the question between the claim of the Marquis de Maison Rouge, and that of the United States.

Mr. BRENT followed, in support of the resolution. He went at some length into the facts of the case, and denied that any suit had been instituted, or, if any, none which could try the claim. No suit could be instituted against the United States, without a law of Congress expressly for the purpose. He knew the settlers personally, and he asserted that not one of them held under any title derived from the Government of the United States; they held under titles from the Spanish Government, and no suit against them could settle the question of Maison Rouge's claim. If Mr. Cox wished to bring his claim before the courts of the United

States, his proper course would be, not to oppose the interference of this House, which alone could enable him to accomplish that object, but rather to invite it to act upon the subject.

Mr. RANKIN replied to Mr. BRENT, and detailed the history of the claim, as it had been for five years successively presented to Congress, together with the different general acts of the Government in their application to the land in question. He thought that the suits now instituted would operate to try the question, inasmuch as they would give to Mr. Cox an opportunity to prove his title; and he deemed it a right of the present holder to have his claim fairly investigated by law, provided that, in pursuing it, he interposed no unnecessary delay.

The debate was farther continued by Messrs. BRENT, RANKIN, BRECK, and CAMPBELL; but, as it turned chiefly on the minutiae of the land laws, it was not reported with particularity.

[The lands involved are of great extent and value, occupying almost the whole of the county of Ouachita, in Louisiana. They remain unsettled—have never been exposed to sale, on account of the claim of the Marquis de Maison Rouge. The tract is in possession of Mr. D. W. Cox, of Philadelphia, who holds under the marquis.]

The hour devoted by the rules of the House to the consideration of resolutions having elapsed, the debate was cut short by the Speaker's calling the orders of the day.

*Gratitude to Lafayette.*

On motion of Mr. LITTLE, of Maryland, the House resumed the consideration of the bill yesterday reported by a committee of the House, "concerning General Lafayette."

Mr. LIVINGSTON, of Louisiana, rose, as one of the members of the committee who reported the bill, to speak to the merits of it. The delay in doing so, which had taken place on the part of the committee, would not have occurred if it had been thought necessary to offer to the House any explanation on the subject. The committee, however, thought it would have been only necessary to echo the voice which is heard from one end of the country to the other. They thought the importance and value of the services of General Lafayette had been so generally known, that it was unnecessary to report the facts, in regard to the services of General Lafayette, on which they thought it expedient to recommend the passage of the bill now before the House. They hoped that the proceedings of this House, when, by a unanimous vote, at the last session, they acknowledged the value of those services, would have made such a report unnecessary. By that vote, Congress subjected the country to an expense, nearly, if not quite, equal to the amount of the proposed appropriation, by agreeing to send out a ship of the line to convey General Lafayette to this

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country. The committee did not calculate, after having done so, and his declining to put the United States to that charge, there would have been any objection to remunerating General Lafayette, in some degree, for his services and sacrifices in the cause of the United States. When, more recently, the Speaker of the House had been directed by an equally unanimous vote, to present the acknowledgments not only of the nation, but of this House, of the important services rendered to the country by General Lafayette, the committee would not have supposed themselves deficient in their duty if they failed to report facts or a statement of accounts in regard to that distinguished man. Speaking for myself, said Mr. L., I considered the proposed appropriation not as an affair of account—not as the payment of a debt due to General Lafayette, but as the expression of a national sentiment, which would do honor not only to this House, but to this people—as an act which would, as far as it goes, serve to take away from us the reproach that Republics are ungrateful. I thought it would not be doing justice to our constituents, if we made this award a matter of valuation—an affair of dollars and cents: I thought a different mode of treating it most respectful to the House—most befitting the dignity of this Government. Other gentlemen, it appears, entertain different views: perhaps they are more correct views. I do not stand here to set up my sentiments against those who think the matter ought to have been treated in a different way. Some think, and I have no doubt they very honestly and sincerely think, that they have no power to express the national gratitude in the manner proposed, or to vote away public money in any case to which a claim to it could not be substantiated on such evidence as would establish it in a court of justice. It was not for the want of such evidence, that the committee did not report it. The evidence in their possession was such as would, if duly weighed, satisfy the most scrupulous, of the justice of giving not only the amount proposed by the committee, but even double that amount.

The services of General Lafayette during the war of the Revolution, Mr. L. said, were known to, and must be acknowledged by, every one. He came to this country at the commencement of the Revolution. He continued his personal services until very shortly before the termination of that war by the treaty of peace. He ceased those personal exertions here, only to render them in the same cause where, at the time, they were more useful. He was, indeed, very instrumental in bringing about that peace so important to us. At that time, yet in prosperity, he would have refused any compensation for his services and sacrifices, had they even been greater than they were. When oppressed by adversity, after the confiscation of the remainder of his princely estate, he accepted from the United States, what he would never before receive, the pay of a Major-General, the rank

which he held during the war. But, besides that, he was entitled, upon every principle of strict justice, to the half-pay of a Major-General for life. Owing to the civil mission, which had already been referred to, General Lafayette was not in service at the close of the war, and had not a legal title to this half-pay, but his right to it, on every principle of equity, could not be questioned. To the representatives of another distinguished officer, (General Hamilton,) similarly situated, Congress granted the amount of half-pay which would have been due to him, and that without commutation. The two cases were nearly parallel. The officers had, generally, the option, and almost, if not quite all, availed themselves of it, of receiving a commutation in lieu of half-pay. General Lafayette had not this option, however, from the circumstance already mentioned, of his absence in Europe at the conclusion of the treaty of peace. What would be the amount of half-pay for the more than forty years that have since elapsed, and the long life, which, Mr. L. said, he trusted this venerable man would still live to enjoy? Twenty added to the forty years already expired, would not be deemed an extravagant estimate: these sixty years of half-pay, without calculating interest, would alone amount to something like eighty thousand dollars. Would any gentleman in this hall say, that General Lafayette was not as well entitled to his half-pay as the family of General Hamilton were, after his decease?

But was this all? No, said Mr. L., it is not all. It is known as a public historical fact, that Lafayette, when he came to this country, brought also important and very necessary supplies to a large amount—an immense amount, considering that it was the offering of a single individual. What was the cost of those supplies, is information which chance alone has thrown in our way. Every one knew that it was great; but a mere fortuitous circumstance led a gentleman, lately at Paris, to inquire into what had been the pecuniary sacrifices of Lafayette in the cause of the United States, during the Revolution; and he obtained a document which shows precisely what money Lafayette did expend in our cause at that time. [Mr. L. here made a statement corresponding with that yesterday made in the Senate, by Mr. HARRIS, establishing that the expenditure of Lafayette, for the use of the United States, during the war of the Revolution, was 700,000 francs, or 140,000 dollars, besides sums modestly kept out of the account, which would have increased that sum.] Add this amount to that which is justly due to him for half-pay for life, said Mr. L., and say whether a fair, honest, and equitable settlement of the account between him and the United States, would not leave us in debt to him, interest included, more than double the amount which the committee had reported in his favor. Here then, sir, is an account of dollars and cents, since gentlemen desire it: here is something to satisfy the most scrupulous.

When you offer to General Lafayette these two hundred thousand dollars, you do not pay the debt—you do not pay what you justly *owe* to him. I am very much afraid, sir, that, in going through this detail, I may wound the delicacy of the gentleman concerned; for I am persuaded that no circumstance would have induced him to bring forward, as a debt, what he *owes* to us. Half of his princely estates he freely spent in our service, without any other recompense than the secret satisfaction of aiding the cause of liberty, to which he from his cradle had devoted himself.

Mr. L. said he would not press upon the House arguments drawn from the feelings of the people of the United States on this subject. Those feelings, said he, are well known: and from what I know of the temper of this House, and of the feelings of the gentlemen who compose it, there is not one of them who will not regret that any consideration of what he believes to be his duty will prevent him from giving his assent to this bill. I yet trust, however, that the vote on this bill will be unanimous. I hope it will be seen that the whole House is moved by one consentaneous feeling, of obedience to the wishes of our constituents—one desire of expressing the sentiment of national gratitude which we owe to the nature of the Government under which we act—one wish to satisfy our own feelings. I do not believe there is one gentleman in this House who will not excessively regret, that any notion of his duty, or regard to the disposition of the funds of the country, would prevent his giving a vote for this bill.

One circumstance there was, in relation to General Lafayette, which, though it did not come strictly into account, as forming a demand upon this Government, furnished an argument which could not but strongly appeal to this House, in favor of that distinguished individual. [Mr. L. here stated the circumstance of the location of part of General Lafayette's land in the vicinity of New Orleans, and his giving it up to the city, &c., substantially as stated in the Senate yesterday by Mr. HAYNE. Mr. L. had the advantage of personal knowledge of the facts, and of having been the medium of communication with General Lafayette on that subject.] General L. declared, on that occasion, he would enter into no litigation with any one in regard to a grant which the United States had thought proper to make to him. He withdrew the location he had made on a most valuable land, now worth 400,000 dollars, and transferred it to land hardly worth a dollar an acre. Mr. LIVINGSTON said he knew an idea had been held out, that the remainder of the land granted to the General by Congress had been sold very well. What had been obtained for it, he did not know; but he could say, for certainty, that, if anybody had given one dollar an acre for it, they had made a bad bargain. That part of it which he was acquainted with he would not have for a gift. The lands which

the General yet held were of no value, as the expense of raising the levee, &c., on the bank of the river, would be greater than the value of the land after it should be so improved.

Knowing a good deal of the circumstances connected with General Lafayette, and having been a member of the committee who reported this bill, he had thought proper to state them, and he hoped what he had said would serve to remove whatever doubts existed on the minds of gentlemen on this subject.

The SPEAKER here corrected an error into which he had fallen, in supposing that a motion for indefinite postponement took preference of a motion to postpone to a day certain. The question being then stated to be on Mr. SLOANE'S motion to recommit with instructions, &c.—

Mr. McDUFFIE, of South Carolina, addressed the Chair. He repeated the terms of the motion, to recommit with instructions to report a statement of facts and accounts, &c., because it more clearly indicated the genius of the opposition to this bill, and the principles on which that opposition was based, than any illustration could do. The motion involved the principle that Congress was about to render compensation to General Lafayette under the obligation of a bond. Put it upon that footing, said Mr. McD., and I shall vote against the bill. Put it upon that footing, and General Lafayette will disdain your offer of payment. What were the services which he rendered to this country, and what the motives upon which they were rendered? Did he render those services, and make those disbursements, upon any calculation of future retribution? Did he enter into a computation of what benefits he was thereafter to derive from them? Not so, sir: they were the magnanimous sacrifices of a heart devoted to liberty, reckless of consequences, succoring a people struggling for liberty. When we come to consider these services, rendered under such circumstances, shall we enter into a cold calculation as to what was the actual amount of the sacrifices of General Lafayette, and hold out to the world that we are rendering him this tardy tribute, not as a voluntary offering of the heart, but as the obligation of a bond? I admit, sir, the extent of the services of this individual; I am perfectly satisfied, indeed, that, upon a fair calculation, the interest alone of the money which he spent in our service up to this time would more than double the amount which this bill proposes to appropriate for his use. The extent of his services might well be a motive of this grant; but to refer this bill back to a committee, to make a minute calculation of the money he advanced for us, would be an act of ingratitude and disrespect to his higher and more elevated claims upon the country. Do you expect to obtain vouchers, said Mr. McD., for what was a *grant to you*, which the generous donor never wished nor intended to reclaim?

Mr. McD. did not intend to express any thing disrespectful to the supporters of the pending

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motion, but he must be allowed to say there was a degree of indelicacy in it which would shock the sensibility of any honorable mind, and particularly of him whom it was proposed to call upon to be an agent in a case so nearly affecting himself. I very much doubt whether, if he heard this discussion, he would receive your donation. I trust we shall put this offer of an expression of our gratitude on such grounds, that he will be induced to receive it: that we shall not render it as a debt due to him, but as a gratification of our own feelings, and of the feelings of this nation. And, notwithstanding what has occurred here, I trust he will accept the offer, not as his right to receive, but as ours to give, as a gratification to ourselves, and as a small testimony of the gratitude of the nation. Mr. McD. trusted that the House would not attempt to investigate what cannot be proved, and will not; that it would not descend to the investigation of facts which are known to the whole world, and are interwoven with the most interesting and important parts of our own history.

Mr. MANGUM, of North Carolina, expressed his deep regret that, at this stage of a business which must for three weeks past have occupied a considerable portion of the attention of the members of this House, a motion should have been made to recommit this bill to investigate facts in the case: and he said he could not view the present motion in any other light than as one which was in effect to test the success of the present measure. On this subject, Mr. M. said, he most heartily concurred in the views of the gentleman who had just taken his seat. What, said he, is the object of this reference? To go into a calculation of pounds, shillings, and pence, with our distinguished benefactor, which he would reject with disdain, and which could not but fill his breast with scorn at the proposition. Such an investigation would be, besides, absolutely impracticable, except by submitting the private concerns and feelings of this distinguished person to a scrutiny which he would shrink from, and which we ought not to require. Are we to call upon that individual to lay before us his vouchers for voluntary donations for our benefit forty years ago? Are we thus to compensate those services which are known even to every schoolboy in our country? I should deem such an examination, if its institution was thought necessary, fatal to this bill, because the objects which it would profess to seek after could never be obtained. And is it believed, by the mover and supporters of this proposition, that General Lafayette, his fortunes being reduced, has been invited to our shores in the imposing manner we have seen; that he has been received everywhere with an enthusiasm which does honor to the sons of heroes—to be called upon here to produce *vouchers* for his claims upon our gratitude?

I have great respect, said Mr. M., for the scruples of gentlemen on the score of prece-

dent; but, for myself, I believe that such a case as this can never again occur; and, if it shall, will this people shrink from meeting it? The gentleman from Louisiana has given an exposition which, it appears to me, must satisfy every one who heard it as to the right of General Lafayette to receive compensation from the United States for services and sacrifices. But, sir, are we to spread a Procrustean bed for the feelings of that distinguished individual to be tortured upon? Are we to give the exact pound of flesh, without one jot of blood? Is such the feeling in which the proceeding towards General Lafayette originated? If it is, the reproach is yet just, the adage is ratified, that Republics are ungrateful. I hope, sir, that the bill will not be recommitted, and that this House will not undertake to render justice to merits and services such as Lafayette's under the influence of a pettifogging disposition, adapted to no higher vocation than litigation in small affairs before inferior courts. I could wish, for the honor of the American name, and still more for the honor of this House, that no such affair as this should have been meditated, unless we get out of the discussion of it in a manner more reputable than I begin to apprehend we shall.

Mr. M. said he did not understand, from what had been said, that any opposition was made to this bill on the score of principle. If we turn over our records, said he, we shall find divers instances of appropriations in a much stronger manner impugning the principles advanced against this bill, than this bill does—instances of money granted merely in the way of gratuity, the present case being by no means one of that character. Was it, at this day, to be seriously argued, that General Lafayette stood, in relation to our Revolution, on the footing of one of the people whose liberties were asserted by it? The correct distinction between the two cases had been drawn elsewhere, that, where a foreign enemy invades a country, all its inhabitants are equally embarked in the contest, and must abide by the consequences of it, it not being in the power of the Government to indemnify all individual losers in such a war. But was that the case with a generous foreigner, whose fortune and talent are liberally embarked in the defence of the oppressed party in the contest? Surely not. It never can be the feeling of America that we should deal to him precisely the measure of strict right. But, let the present case be put even on that ground: it was proved by the exposition of the gentleman from Louisiana, and by facts of historical notoriety, that the proposed grant would still be inadequate to the demands of justice. Mr. M. therefore expressed an earnest hope, that, as General Lafayette had set up no claim in his case, inasmuch as he was not a plaintiff in this action, and the case was not to be tried upon technical pleadings, that the services which he rendered in the morning of his fortunes, would be met by this nation in a cor-



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responding spirit, now that he is in the eve of his life.

The present motion, said Mr. M., I must consider as testing the strength of the bill; and sure I am, that, if we listen to the voice of all these people, who, in their person felt the horrors and privations of the Revolution, or of the true descendants of their fathers who did feel them, we shall very much misrepresent them if we refuse to make the old age of Lafayette easy and comfortable. As one of the committee, I have felt it my duty to say, that I decline a technical examination of the services of this veteran, because his services were never rendered in that spirit, and the people do not wish to meet them in it.

Mr. HERRICK, of Maine, then rose, and said, that from the motion that he had submitted to the House, it might be supposed that he was in favor of the indefinite postponement of the bill, as being opposed to the bill itself. He was glad to have an opportunity to explain his views, and remove any false impression which might have been made in this particular. So far from being opposed either to the principle or to the form of the bill, he was, on the contrary, prepared to vote for almost any sum which the House should think fit to give, and had flattered himself that the bill, as introduced by the committee, would have passed the House without opposition: he did hope that there would not even be one word of discussion on the subject; but, from the course which things had already taken, he felt apprehensive that any thing which the House might now do would be ineffectual, as he greatly doubted whether, after what had happened, the individual concerned would accept the donation, should it be made. This was one of those acts, of which it might emphatically be said, that, if done at all, it must be done quickly. If we are to sit, in cold debate, discussing and disputing the minutiae of such a bill, our passing it, he feared, would be in vain. Yet, still, if gentlemen shall conclude to pass this bill, they might rely upon it that he, for one, would never oppose its passage, when that question was fairly presented to him.

Mr. BARTLETT said that he rose, not to discuss the measure before the House, but to submit a proposition, which he hoped would render discussion unnecessary. He should regret deeply to see the Journal burdened with records of yeas and nays, motions and amendments, in a case like this. He had hoped that this bill would have passed in a manner as spontaneous as unanimous. He had hoped that, when we sent for General Lafayette, and invited him, by a public act, to our shores, it was not to ask who he is, what he has done, and why we have called him; he had supposed that we knew who General Lafayette was, and that none needed to ask what he had done. But he had had reason, since the delay and opposition which had occurred to such a bill as this, to think that it would be more honorable to the country,

that yet further delay should now take place, in order, if possible, to give unanimity to its act on the subject. I cannot but remember, said he, that it is scarce ten days since we passed, with great unanimity, a bill to reward our own services, and I did suppose that the services of Lafayette were at least as well known, and as highly estimated, as ours. He was desirous that the bill should pass, not as a forced, but as a deliberate measure. He was unwilling to press it against an opposition which, if persevered in, must operate to take away all the grace of our gratuity. And, under these impressions, he was desirous of postponing the motion to recommit, and this whole subject, till Monday next.

Mr. CAMPBELL, of Ohio, then rose, and observed, that having yesterday had the courage, perhaps some would say the audacity, to make some little opposition to this bill, which had been precipitated into this House like a comet through the atmosphere, it might be expected that he should give some explanation of the reasons which had influenced him. He did not rise to oppose the resolution for postponement, for he was himself in favor of it. He wished, for himself, some further time for reflection, and he could not but say that there was some little ill-nature in the remark of the gentleman from North Carolina, (and he was sorry to say so, for no gentleman on that floor was, in general, more decorous in debate,) that two weeks had already been spent in this subject. But why had this time been allowed the committee, unless to give them opportunity, by reflection, to mature the measure they should present to the House. The gentleman should remember, that to the House nothing like this time had been allowed—indeed no time at all. And though the minds of the gentlemen of the committee might be fully made up, yet they were not to expect that, therefore, the minds of other gentlemen must also be so. It was not strange that, on a subject like this, there should exist some diversity of opinion. For his own part, Mr. C. said, he had never been opposed to the principle of the bill, and he would candidly state how far he had felt willing to go. He would have been in favor of granting a sum of \$50,000, and allowing General Lafayette the pay of a Major General for life. Had this been done, would it not have been quite as decorous, as attempting to force the bill through the House in its present form, without one word of explanation from the committee? Let us, said Mr. C., have time to commune with each other, and with the gentlemen who brought in the bill, as they have had time to commune with each other; but, if we must be taken by surprise now, I, for one, shall oppose the bill, and am willing to meet the consequences of that opposition, be they what they may—even though I may be so unhappy as to incur the displeasure of the gentleman from Louisiana, whose good opinion I confess I value as much as that of any other citizen I know. I

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*Gratitude to Lafayette.*

[H. OF R.]

feel that I have a duty to perform; I certainly shall perform it, nor can any power of man prevent me from doing it. With these observations, Mr. CAMPBELL expressed a hope that the motion of the gentleman from New Hampshire (Mr. BARTLETT) would prevail, for a postponement of this question for a few days.

After some explanations from the Speaker, as to the point of order, Mr. TUCKER, of Va., moved to lay the bill on the table, his object being to give time for conciliating a unanimous vote on the bill. The question being taken, this motion was negatived by a large majority.

Mr. MERCER, of Virginia, then rose, not, he observed, to wound the feelings of the House, by debating the principle of the bill before them, for, on that topic, he was persuaded there existed within those walls but one sentiment. He rose chiefly with the view of corroborating some of the statements which had been submitted to the House by the honorable member from Louisiana, (Mr. LIVINGSTON.) In doing so, he thought he should be able to win to the support of the bill the honorable member from Ohio, (Mr. CAMPBELL;) and, in so designating him, he did not use the language of ordinary courtesy, for he cherished habitual respect for his honorable friend. He rose, Mr. M. said, with no faint hope, however feeble his resources for the task, that he should prevail on all the gentlemen, who, to his great regret, differed from the majority of the House on the details of the bill, and for whose scruples he entertained the most indulgent respect, to unite with the friends of the bill in a unanimous vote. The question presented by the opponents of the bill, admitted of but two doubts, of the facts or the inferences from them, on which the assertion is grounded, that the grant proposed by the bill, to our illustrious guest, falls short of his pecuniary claims upon our justice.

Having been himself the medium through whom the manuscript which had been just read, had passed into the hands of the honorable member from Louisiana, he felt it to be incumbent on him to verify its authenticity.

On its very face, which bore marks of antiquity correspondent with its ancient date, it carried strong internal evidence of its truth, which was corroborated by a knowledge of the highly respectable channel through which it had very recently reached America. It moreover referred to a prior document submitted by the writer, who had charge of the estates of General Lafayette, to the Bureau of Emigrants of the Department of the Seine, early in the year 1793; at a time when the Revolutionary government of France sought to accomplish two purposes by inquiring into the condition and the causes of the dilapidation of the estates of General Lafayette, then proscribed, and driven from France by their crimes and their injustice.

This agent, Mons. Morizet, with a modesty derived from the example of the amiable man he served, reduces the sum of those expendi-

tures which General Lafayette had incurred in the service of the United States, the cost of two voyages to France, and had in this account stricken from the entire sum of 1,038,000 francs, 388,000. But, as these voyages, attended at the time with peculiar hazard, were undertaken at the request of General Washington, and for the obvious benefit of the United States, these expenses, instead of being deducted, should be added to the account. To a sum, therefore, exceeding two hundred thousand dollars, should be added the interest for the forty-three years which have elapsed since the last expenditure of this long account, which would swell it to thrice the amount of the proposed appropriation.

The honorable member from Louisiana very justly computed the half-pay equitably due to General Lafayette, for the same period; but, in omitting to notice the interest as equitably due on it, he left out a sum which would have swelled that single item to an amount equivalent to the object of our present debate.

With respect to the generous release, by General Lafayette, of the land which he had acquired near New Orleans, under our own grant, Mr. M. said he was perfectly acquainted with all the circumstances attending the transaction, through the voluntary communication of the Commissioner of the Land Office; and that they left no doubt on his mind of the validity or value of the title which General Lafayette had released, with equal generosity and delicacy.

The United States granted to General Lafayette, in part as his legal bounty, and in part as a manifestation of their esteem, 11,540 acres of land, to be chosen out of any of the public lands of the United States. He chose, for the location of a part of it, to use a term borrowed from our laws, an ungranted territory, which nearly environed the city of New Orleans. A large part of this location has since become the heart of the city. In the midst of it stands the custom house; it is the theatre of extensive trade, and covered with numerous and splendid edifices. The title of General Lafayette to this land, under our own grant, was indisputable. Some years after he had appropriated it to his use, the Corporation of New Orleans petitioned Congress to grant to them the portion of the public territory within a distance of six hundred yards around their city, and the National Legislature, unapprised of the claims of the prior occupant, conceded what they asked. Of the superior title of General Lafayette to the land covered by this subsequent grant, there could be no doubt. Why he did not prosecute and maintain his claim to this estate, so honorably and justly acquired, has been already fully stated to the House. This donation had been made him without his knowledge, in the fulness of our hearts, touched as they were with a knowledge of his wants, as a token of our sympathy, esteem, and gratitude; and he felt that it did not become him to question the precise extent of such a grant.

The value of the land which he so magnanimously relinquished, has, doubtless, not been overrated, at four hundred thousand dollars.

Can there remain a question, then, but that the equitable claims of General Lafayette upon the United States, were he disposed to substantiate them, would exceed a million of dollars?

For himself, said Mr. M., he had hoped that the stock which the Senate had proposed to issue—and he greatly preferred their bill to that which had originated in this House, instead of being made redeemable among the last debts of the nation, would have been irredeemable forever, that it might forever remain a memorial of the gratitude of the American people to their illustrious benefactor. He had hoped that the land presented with the stock, instead of being limited to a poor township, would have reached such an extent, as to realize, in its future appreciation, to the descendants of General Lafayette, the entire debt of this nation to their generous ancestor.

He did not mean to comprehend our debt to this, our benefactor, for his services, but for his pecuniary advances and their accruing interest.

As to his services to our cause—the cause of freedom in Europe and America, their value is immeasurable. There is not a man who now, or may hereafter tread our soil or breathe our air, with the elastic spirit of liberty, who is not, or will not owe him an inestimable debt,—a debt to be felt, not to be computed. I defy the united powers of Euclid and Archimedes to calculate or measure the height and depth, the length and breadth of the obligation of America to her benefactor. It is here, said Mr. M., (laying his hand upon his heart.) It belongs to the soul, and no gauge can graduate it.

Are gentlemen alarmed at what is called the example, the precedent, we are about to offer to our successors? I have labored, said Mr. M., with all the powers of memory, to recall to my mind an example of disinterested and heroic benevolence which can form a parallel to the conduct of Lafayette; and if the history of the past affords none, why need we not trust the future? The only spirit of prophecy which is not of divine inspiration, exists in the analogy which infers the future from the past.

But what is the character of the example from which this unfounded apprehension arises? Was it not to our fathers, is it not to us, and will it not be to our posterity, invaluable? Need we go back to the crusades to demonstrate the influence, the contagion of chivalrous enthusiasm? No sooner was the consecrated banner of Peter the Hermit unfurled for the recovery of the Redeemer's sepulchre from the infidel Saracen, than one spark of inspiration electrified all Europe; one common soul pervaded all Christendom, and poured her armed nations on the plains of Asia.

Contrast the heroism of that age with the solitary self-devotion of Lafayette! When I look back to the early period of our Independence, and behold our own unrecognized ministers in France, with a tenderness which does them immortal honor, remonstrating with the young enthusiast on the hazard and hopelessness of his projected enterprise in our behalf—when I hear them, in a tone of generous remonstrance, tell him that our cause was sinking, and they had not even a vessel to offer him for his perilous voyage, and hear him reply, "I have, then, no time to lose!" I cannot, turning from this scene to that before me, bring myself to believe, that gentlemen, who differ from the obvious majority of this House, need to rest three nights upon their pillow, before they can arrive at unanimity upon this bill. I cannot but believe, sir, that when we come to the vote, we shall do it with one heart, and that we are now as well prepared as we shall be on Monday next. We have now met our opponents in the spirit of friendly explanation; we have complied with their wishes—stated, recapitulated; and, I fervently trust, they are ready to act with us for the honor of our common country.

Mr. STORRS, of New York, then rose, and said that, as one of the members of the committee to whom this subject had been confided by the House, he felt it his duty to that committee, and to himself, to say a few words in vindication of the course which had been pursued in relation to this bill. Complaints had been urged by some members of the House, that no statement had been produced of what seemed to be considered as "the accounts" of Gen. Lafayette. The committee had never insulted that individual by asking, in any quarter, for such things as his accounts. After the President of the United States had, in his solemn address to both Houses of Congress, recommended the services and sacrifices of General Lafayette as worthy of legislative regard, and had advised that such a provision would be made for him as "might correspond with the sentiments of the American people, and be worthy of the character of this nation," what had a committee to whom that recommendation was committed by this House, to do with his accounts? Were they to erect themselves into a Committee of Claims where no claim was made; and what was more, where no such thing as a claim would be endured by that House, as violating the feelings of a man whom it wished to honor? Ask for his accounts! Sir, I would not perform such a task. Not even were you to order me, could I do it without insulting him. No, sir, we had no such matters as the *accounts* of General Lafayette to lay before the House.

Sir, let us remember that the eyes of Europe are this moment upon us. Her monarchs, her people, are anxiously waiting to see how we shall act. The despots of the Old World are anxious to know whether, after inviting La-

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*Occupation of Northwest Coast.*

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fayette to our shores—after offering to send a national ship to bring him over—after welcoming him from city to city, we are about to send him back and subject him to the sneers of royalty, and with him, to expose ourselves and the cause of free government to their reproaches. The question we are called to decide is, whether America, for whom he shed his blood, devoted his fortune, and dedicated his talents and his virtues, is about to send back her benefactor in the face of Europe, to be the object of their scorn, and leave the record of our proceedings as a monument of the feelings of the American people. The question before us is, whether we will support the principles of our own Government in our conduct towards one who has been considered on both continents as the great Apostle of Liberty, and justly so considered; for, next to the great Apostle of the Gentiles himself, has this man served the best interests of mankind. Next in value to those which the one disseminated, are the blessings which the other has labored to spread among the nations of the world. The question is, whether his services are worth a memorial? This, it is true, is not needed for his character; as has been well said on a public occasion, "history has already taken charge of his fame;" but, as was justly observed by the presiding officer of this House, General Lafayette now stands among posterity, and our act this day is to be the judgment of posterity on his merits and his fame. Are we then here to record our value for civil liberty and all the blessings it bestows, or is it that we may send one of the greatest benefactors her cause has ever known, back to his country as a witness of the ingratitude of Republics? But I said I would not speak of his services, nor will I. Whoever has known or read our history can be no stranger to what he has done for us. It is to be known to-day what we think to be due at least to our character as a nation.

The question was then taken, on the motion of Mr. SLOANE, and decided in the negative.

The question was then taken, on the motion of Mr. GAZLAY, to strike out 200,000 dollars, the amount proposed to be paid to General Lafayette, and to insert 100,000, and decided in the negative by a large majority.

The question was then taken on ordering the bill to be engrossed, and decided in the affirmative by a large majority.

It was then ordered that the bill should be read a third time to-day.

The bill was then read a third time, accordingly, and the question thereupon decided, on request of Mr. BENOHER, by Yeas and Nays, as follows:

YEAS.—Messrs. Abbot, Adams, Alexander of Virginia, Alexander of Tennessee, Allen of Massachusetts, Allen of Tennessee, Allison, Archer, Bailey, Bayles, Barber of Connecticut, P. P. Barbour, J. S. Barbour, Bartlett, Bartley, Bassett, Blair, Breck, Brent, Brown, Buchanan, Buckner, Cam-

breling, Campbell of S. C., Carter, Carey, Cassedy, Clark, Cocke, Collins, Conner, Cook, Craig, Crowninshield, Culpeper, Cushman, Day, Durfee, Dwinell, Dwight, Eaton, Eddy, Edwards of Pennsylvania, Ellis, Farrelly, Floyd, Foot of Connecticut, Foote of N. Y., Forsyth, Forward, Frost, Fuller, Garrison, Gatlin, Govan, Gurley, Hall, Hamilton, Harris, Harvey, Hemphill, Henry, Herrick, Hobart, Hogeboom, Holcombe, Hooks, Houston, Ingham, Isaacks, Jenkins, Jennings, J. T. Johnson, Kent, Kidder, Kremer, Lathrop, Lawrence, Lee, Leftwich, Letcher, Little, Livingston, Locke, Long, Longfellow, McArthur, McDuffie, McKean, McKee, McKim, McLane of Delaware, Mangum, Mallary, Markley, Martindale, Marvin, Matlack, Mercer, Miller, Mitchell of Pennsylvania, Mitchell of Maryland, Moore of Kentucky, Moore of Alabama, Morgan, Neale, Nelson, Newton, O'Brien, Olin, Owen, Patterson of Pennsylvania, Plumer of N. H., Plumer of Pennsylvania, Poinsett, Rankin, Reed, Reynolds, Richards, Rose, Saunders, Sandford, Sharpe, Arthur Smith, Alexander Smyth, Wm. Smith, Spaight, Standefer, A. Stevenson, J. Stephenson, Stewart, Stoddard, Storrs, Swan, Taliaferro, Tattnell, Taylor, Ten Eyck, Test, Thompson of Pennsylvania, Thompson of Georgia, Tomlinson, Tracy, Trimble, Tucker of Virginia, Tyson, Udree, Vance of N. C., Van Rensselaer, Van Wyck, Warfield, Wayne, Webster, Whipple, Whitman, White, Wickliffe, Williams of Virginia, Williams of N. C., James Wilson, Henry Wilson, Wilson of S. C., Wolfe, Wood, Woods, and Mr. Speaker—166.

NAYS.—Messrs. Beecher, Buck, Burleigh, Campbell of Ohio, Crafts, Gazlay, Gist, F. Johnson, Lincoln, Livermore, McCoy, McLean of Ohio, Matson, Metcalf, Patterson of Ohio, Ross, Scott, Sloane, Sterling, Thompson of Kentucky, Tucker of S. C., Vance of Ohio, Vinton, Whittlesey, Wilson of Ohio, and Wright—26.

When the yeas and nays had been called and recorded, the SPEAKER rose, and observing that, having been precluded by the place he held, from the expression of his sentiments in relation to either the principle or the form of the bill, he requested of the House that he might be permitted so far to give expression to his feelings, in relation to both, as to record his vote with those of the other members; and, leave having been promptly given, the Clerk called the Speaker's name, and his vote was recorded in the affirmative.

When the House adjourned.

THURSDAY, December 28.

*Occupation of N. W. Coast.*

The engrossed bill "To provide for occupying the Columbia or Oregon River," was read a third time.

And the question then recurring on the final passage of the bill, it was determined in the affirmative—yeas 118, noes 57.

So the bill was passed. Its title was altered, at the suggestion of Mr. FLOYD, by omitting the words "Columbia or" before the word Oregon, and then the bill was sent to the Senate.

MONDAY, December 27.

*Niagara Sufferers.*

On motion of Mr. TRACY, the House went into Committee of the Whole, (Mr. CAMPBELL, of Ohio, in the chair,) on the bill "further to amend the act authorizing the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes."

Mr. WILLIAMS, of North Carolina, rose in opposition to the bill. The principle of the gentleman from New York, (Mr. TRACY,) is, that, though the house should have been occupied on the first day of the war and destroyed on the last, the Government is bound to indemnify the sufferer, because the war is its own act. Sir, I not only deny this position, but I greatly doubt if the Government is answerable in any case. I know that, on this point, writers on national law differ in their opinions. But I hold it to be the sentiment of the best of these writers, that Government is not liable for any destruction of property by an enemy. The gentleman says, that the citizens on an exposed frontier are, or ought to be, the objects of peculiar protection to their Government. I question this. Sir, is not every citizen under this Government free? Does he not choose for himself the place of his abode? Does he not know that, on a maritime frontier, especially, he will enjoy advantages peculiar to that situation—advantages of marked—advantages of easy and cheap transportation, which the citizens in the interior cannot possess? And does he not know, on the other hand, that in case of the recurrence of a state of war, the frontier will, of course, be most exposed to danger; and if, in his opinion, the advantages to be enjoyed do not fully compensate the danger to be incurred, is he obliged to go there? The citizen in the interior is forced to march many miles to defend him, and also has to pay taxes for the same object—and would we compel him, after the war is over, to pay all his losses too? Sir, the Government of a country ought to be just, not only before a war, but during the war, and after the war. If the citizen in the interior must pay what he on the frontier suffered by the war, why ought not the citizen on the frontier to pay him of the interior for his expenses in coming to aid him? It is a bad rule that will not work both ways. The gentleman from New York well knows that citizens on the frontier have commonly an active part in occasioning the wars of a country, (especially wars on a commercial question,) and yet he tells us that if you do not give them special protection, they will be in danger of making terms with the enemy. Sir, let them do it—and then let them see whether their Government will not know how to punish such behavior. They call on Government just as if they had had no hand or part in bringing on the war—as if it were the doing of the interior ex-

clusively—yet we all know, and so do they, that the reverse is true.

It is in the nature of things impracticable, that a Government should pay for every loss its citizens may sustain by a state of warfare. All such as are merely incidental must be borne by the sufferers.

And, as the Government is not bound in equity to repay losses of this kind, so neither is it a dictate of sound policy that they should do so. Once adopt this practice, and you render yourselves assailable at once. Especially if you have an extensive seaboard, and a maritime foe, you invite him to aggression; you make it his policy to depredate; you give him the strongest temptation to transfer the war from your person to your property; you take from war every thing of a brave and noble character, and make it a mere game of burning and pillage. Surely this one consideration is enough to warn us against sanctioning such a bill as is now before the committee. Refuse to pay such losses, and what will be the effect? The effect will be that the frontier citizen will do his utmost to defend himself and his property. You call in the aid of two passions instead of one. If a man is sure of being repaid for the devastations of the enemy, his only motive to resist them will be his patriotism; but, if he knows he is to receive no indemnity, he will fight not only from patriotism, but from self-interest. The gentleman cannot be so unacquainted with the nature of the human mind, as not to perceive the effect of bringing in such a principle to aid the arm of the citizen soldier.

I must now say a few words on the doctrine of retaliation. The gentleman seems to think that the burning of Newark, by the American troops under McClure, was a wanton and improper act; and, in his report at a former session, he charges it on our Government, and maintains that the enemy had a right to retaliate. Sir, I deny his position in toto; I say, and I hope to prove, first, that the destruction of Newark was not a wanton act; and, secondly, that the enemy had not the least right to retaliate it. If the gentleman had directed his views a little farther on this subject, he would have been able to perceive and to trace the same predatory spirit which led to the devastation of the Niagara frontier, prevailing through both our wars with England. In the war of the Revolution, as well as through all the stages of our late contest, they were actuated by the same temper towards us. [In support of this position, Mr. W. went into a series of quotations from the history of both wars, referred to the conduct of the British army under Cornwallis, and when led by the traitor Arnold—to the burning of Falmouth, the ravaging of New Jersey, and the cruelties on board the Jersey prison ship, in which eleven thousand men were said to have perished. He then proceeded to the conduct of Admiral Cockburn at Frenchtown, Havre de Grace, Georgetown, Fredericktown, and Hampton, interposing comments as

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he proceeded, and arguing, from the whole, the prevalence of a mean, dastardly, malignant spirit of revenge and personal cruelty.] Now, (said Mr. W.,) I put it to the gentleman from New York to say, after all this series of conduct, from February to May, 1818, whether the destruction of one village, eight months afterwards, could be considered as a wanton act of aggression? No, sir—no; if the American army, instead of burning the village of Newark, had laid waste with fire and sword the whole Canadian frontier, they would have inflicted an act of retaliation well merited by the barbarities perpetrated at Hampton alone. But was this an act of our Government? The Government disavowed the act the moment they heard of it. Was this an act of wanton destruction done for its own sake, and a parallel to the British murders and ravishings in the Chesapeake? It was a purely military movement, necessary to the destruction of Fort George; deliberate notice was sent to the inhabitants, and time allowed them to remove their persons and effects. As a pretended retaliation for such an act, the enemy landed on the 19th, burnt Lewistown, Youngstown, Manchester, and even the little village of the Tuscarora Indians. No notice was given—no time for removal of goods, or even for personal escape; and so far was the injury from being confined even to all these villages, that the whole country was fired and laid waste; they burned, they ravaged every object they could reach; but I cannot preserve a due command of my feelings when I reflect on those scenes. Sir, we find the same thing from '76 to 1815, the same conduct, the same spirit; and, with facts like these within their knowledge, the Committee of Claims did right in denying, as I now deny, all right on the part of the enemy, to waste that frontier on the principle of lawful retaliation, and the consequent right of the claimants on that ground. The law says that, in order to indemnity, it must be shown that the occupation of the property for military purposes was the cause of its destruction. Now, sir, let me put a case. Suppose the enemy in the Potomac, within cannon shot of this city; and suppose one of the houses here was occupied as a barracks for troops, and in a bombardment of the city with red-hot balls, that house should with others be destroyed, would the owners have a just claim, under the law, to be repaid its value? No, sir; the Government would be bound to no such thing. It was not the occupation of the house as a barracks that caused it to be destroyed—the enemy was not to know of such occupation; the house was destroyed with others not so occupied; it was a casualty, and the sufferer must bear his loss.

On these grounds, Mr. Speaker, I am decidedly of opinion that this bill ought not to pass. If it does, it will not only make a destruction of your treasury, but it will be an act without a parallel in the history of legislation. I will venture to assert that such a law is not

to be found within the lids of any code among civilized nations. The gentleman, indeed, says the Emperor of Russia has made a similar allowance to his citizens—subjects I would say—he has no citizens; but the case is widely different from that before us. The damage for which Alexander made allowance was made by his own authority—the burning was his own act. But that for which we are called to empty the treasury is the act of an enemy. If, indeed, these losses had been occasioned by the act of an American force, acting under legitimate authority, I should say, under my present impressions, pay the demand. But the case is widely different. I was always opposed to the act of 1816—but when it had passed and became a law, the Committee of Claims, so far from impeding its operation, honestly endeavored to carry it into effect, not viewing the claim of the sufferers as a right which the Government had been forced to allow, but as a claim of suffering fellow-men to whom relief had been extended as an act of compassion and charity.

Mr. CAMBRELENG, of New York, said that, however widely the gentleman from North Carolina differed from him, as to the justice of these claims, he was glad to find there was no difference of opinion as to the atrocious character of the enemy's conduct during the late war. It was impossible to forget the horrors of Hampton and Havre de Grace—the Vandalism here; or the massacre of our countrymen on the Raisin. *These* were acknowledged to be contrary to the usages of civilized war; and retribution for these losses was due from the enemy, and not from our own Government. But the case now before the committee was of another character—one, as he thought, strictly within the rule laid down by the gentleman from North Carolina; that wherever, by military occupation, the property had acquired a military character, it was rendered liable to destruction by the enemy; such he considered to be peculiarly the case on the Niagara frontier. But, on this subject he would quote an authority which could not be objected to—[Mr. C. then read the evidence of General Porter, to establish the military character of the frontier generally throughout the war; the houses upon it being almost without exception occupied for public stores, arsenals, barracks, quarters, &c.] There were other depositions, Mr. C. said, all in accordance with this, which it was unnecessary to detain the House by referring to. If ever there was a case of military occupation, this appeared to be completely so. If a Government was, in any case, bound to indemnify its citizens for losses, this certainly was one. Mr. C. said he should not contend that Government was bound to indemnify its citizens for the value of all the towns and villages falling within the track of an invading army, nor for all the losses incidental to war; but he should contend that, as far as the ability of the nation extends, it ought to indemnify its citizens for losses occasioned by military occu-

pation; and he did not doubt the ability of this nation to pay all such losses.

With regard to the question of retaliation, he differed with the gentleman from North Carolina. He had never before heard that the burning of Newark was on our part a measure of retaliation. He had always thought that, as the villages on each side of the frontier were occupied by the troops of both nations—and as they could not remain on this frontier during the winter without the use of these villages—they were throughout the war at all times liable to destruction on both sides, as they were absolutely necessary, both to us and to the enemy. It was, he presumed, for that reason these villages were destroyed. The enemy had no such justification for other atrocities. It was doing injustice to our country to attribute the burning of Newark to a motive of retaliation.

Whatever might be the usages of European nations as to making indemnity for losses, he could not think these rules applicable to our condition—they were better designed for nations surrounded by warlike and powerful neighbors, liable to continual invasions, rendering indemnity almost out of the question, if not impracticable. Our condition was different. In looking forward to future wars, he had no apprehension of invasion, if the Government persisted in the policy it was now pursuing. Indeed, if the same policy had been pursued at an earlier period, our country never would have been invaded. He could not think that any alarming principle would be established by the bill. Our future wars—the theatre of our future wars, would be carried far beyond our boundaries—they must be upon the ocean. Our country will never be again invaded. The spirit of invasion, and the record of our disgrace, perished together in the flame of Orleans.

TUESDAY, December 28.

*Niagara Sufferers.*

On motion of Mr. TRACY, the House went into Committee of the Whole on the bill "further to amend the act authorizing the payment for property lost, captured, or destroyed, by the enemy, while in the military service of the United States, and for other purposes."

Mr. P. P. BARBOUR said that his design in rising was not to oppose the details of the bill now before the committee, but to offer a proposition superseding them altogether. He wished to test the sense of this House on the principle of the bill, and with this view he moved to strike out the enacting clause. It was not his intention to detain the committee by any prolonged discussion; he wished to direct them at once to the principle of the measure, and, in doing so, he should submit to their consideration some general principles of national law, and a few facts which he thought had a bearing on the question before them.

It had been his fortune to be a member of this House when the subject of these claims was first brought before Congress, and he had

at that time borne some small share in discussing it. He now begged leave to recall some of the considerations he had at that time urged, and in doing so he should be very brief. The great question to be settled is this—What is the nature and character, and what is the extent, of the obligation which a whole community owes to its individual members for losses sustained during a state of warfare from acts of the enemy? (for in this case a broad distinction was to be preserved between acts of an enemy and the acts done by the authority of our own Government.) Now, said Mr. B., it seems to me that, as to the obligations of the Government in such a case, there can be but one sound general principle assumed. Whenever a war is declared, the immediate consequence of such declaration is to place every individual of each Government, together with the property of every individual of each, in a relation reciprocally hostile to each other; and, according to the original principles of international law, each nation had a right to do the other all the harm it could, indiscriminately, without respect to any distinction of persons or property. But such a principle has long been abandoned by all civilized nations—and the rule which has by general usage been substituted in its place, seems to be that, as to persons, non-combatants shall be as exempt from danger or injury as if the two nations were in a state of perfect amity—and with respect to property, unless in certain extraordinary circumstances, that it shall not be subject to destruction or injury, unless it be immediately connected with and used for the purposes of war. From these doctrines of international law, as held by all civilized nations, it results, as a general principle, that, for all the losses which the people under either Government sustain in consequence of the declaration of war, they have no demand upon their Government for indemnification, because all share in one common fate. The law presumes a tacit stipulation among the members of a community, that they shall share its fortunes whether of good or evil; but if, by any act of the Government, property which otherwise would have remained in a state of safety, is withdrawn from its pacific character, under which it was not liable to injury by an enemy, and invested with a warlike character, a character which exposes it as an object of hostility, the Government shall be bound to indemnify the owner for any damage it may sustain in consequence of such change of character. This rule will apply to property of every description. If a house, for example, be taken by the Government, and made a place of deposit for troops or for military stores, and while thus occupied is destroyed legitimately by the enemy, so that that occupancy was the cause of its destruction, the Government is bound—the individual who owned the house has suffered from a new character induced upon his property by the act of the Government.

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On this principle, the act of 1816 directed that when such a state of facts should be proved, the amount of their loss should be paid to those who suffered under such circumstances. But are we to go farther? Are we to allow claims for all the ravages which an enemy may perpetrate contrary to the law of nations? Surely not. I can, indeed, suppose a case where a whole extensive district of country is laid waste by an incursion of the enemy, and all its inhabitants reduced to ruin. How far such a case might address itself to the sympathy of the Government—what appeals it might make to compassion and humanity—how far it might melt our feelings or call for our charity, is a question wholly different from the question we are now arguing. We are now speaking of what has for distinction's sake been called a perfect obligation. Such as might arise from the case I have supposed, can only amount to what is called an imperfect obligation. A man is under such imperfect obligation to give to any miserable fellow-creature whom he can without impropriety relieve. But he cannot be forced to do so. There exists nothing like that sort of obligation by which a man is bound to pay his debts. The appeal, in one case, is to liberality, to pity, to compassion; in the other case it is to strict and naked justice. The difference is immense. The one obligation is tangible—it can be measured—it can be reduced to a fixed and definite limit. The other is of a nature which can neither be limited nor measured—it eludes our scrutiny—it is a thing of feeling merely. Now, what one individual may justly force another individual to do, he might, with the same justice, force a Government to do—but, as its sovereignty interposes to render this impossible, the Government ought, and is bound, to do it of its own act. In the case of a perfect obligation, there is no choice, no limit, or restriction; the thing must be done, and to the whole extent of such obligation; but, in case of an imperfect obligation, we may pause, we may inquire into circumstances, we may consider our means, we may listen to the dictates of policy, and act as we make up our free choice upon the whole case when considered. But this bill proceeds on the principle that the Government is *bound* to make compensation, and it is on that principle that I wish to try the sense of the committee by a motion to strike out the enacting clause of the bill. I may illustrate my idea by an example taken from the municipal law. Suppose a case of larceny; is the Government bound to pay the loser? Certainly not. But it is bound to punish the thief, if it can catch him. So, if a foreign nation has inflicted lawless injury on a citizen, his Government is bound to punish that nation, if it can, but not to indemnify the citizen out of the public chest. [Here Mr. BARBOUR quoted the bill, and urged and enforced the objection which had yesterday been made to it by the gentleman from North Carolina, (Mr. WILLIAMS,) viz: that it would provide for pay-

ment, should a house have been occupied but a night upon a march, in the first week of the war, and not destroyed by the enemy till the last week of it.] The principle I advocate would repudiate such an allowance. The occupancy alone removed the house from its ordinary condition, and, by giving it a military use, rendered it liable to attack and destruction, on the principles of civilized warfare. But that occupancy has ceased—the house returns to its ordinary character—it is now not lawful to destroy it, and if it is destroyed, the Government is not bound to pay for it.

Mr. BRADLEY, of Vermont, said he did not rise for the purpose of extending the debate, nor should he have risen at all, had the principles by which he should be governed on this occasion been enunciated with sufficient distinctness. He cordially agreed with the learned gentleman from Virginia, on most points, but thought he had not fully explained the reason of the distinction he had made. Mr. B. said he was not aware of any instance in which a Government was bound to indemnify for a belligerent act, considered simply as such, and most of the difficulty which had occurred arose from cases where property was destroyed by the enemy, when in possession of the Government. But Mr. B. begged the committee to remember that no difference existed in these cases, whether the property was destroyed by the enemy or the Government itself. And the reason was this: every well-regulated Government, when it takes the property of the citizen, is bound to pay for it; and if it is taken for a temporary use, to return it in a state as good as it received it. When, therefore, it is destroyed by the enemy, the Government is deprived of the power of performing the moral obligation under which it labors, and can only make compensation in money, which it is bound to do. Nor can it take advantage of the same defence, as an individual, for the non-performance of its contract. For the private lessee defends on the ground of inevitable necessity—a necessity against which he could not by possibility defend—but the Government being intrusted with the whole power of the nation for its defence, is not permitted to avail itself of this excuse. For this reason, Mr. B. said, his vote would be entirely regulated by the proof how far the property in question was in the actual possession of the Government; and, if it was not in such possession, he conceived the petitioners had no greater claim than every individual subjected to the vicissitudes of war.

Mr. TRACY, of New York, then took the floor, in support of the bill, and had been addressing the House for some time, when,

On motion of Mr. WRIGHT, of Ohio, the committee rose; and, having obtained leave to sit again,

The House adjourned.



WEDNESDAY, December 29.

*Georgia Militia Claims.*

Mr. THOMPSON, of Georgia, according to notice, moved to discharge the Committee of the Whole from the further consideration of the report of the Committee on Military Affairs on the claim of that State for compensation for services performed by her militia in 1798-'4.

The motion was carried—ayes 68, noes 56.

Mr. THOMPSON then moved to recommit the report to the same committee, with instructions "to report a bill making an appropriation for the payment of the said claims; the appropriation to be conformed to the report of the Secretary of War, made to this House upon the subject of those claims, in the year 1803, and to embrace each class of claims respectively, as described in that report."

In support of this motion, Mr. THOMPSON rose, and addressed the House as follows:

It becomes my duty, said Mr. T., as a Representative of the people of Georgia, to urge upon the attention of the House the consideration of the claim which is exhibited in the report now before you. It is with some hesitancy I make this attempt, not because I doubt the strength or fairness of the claim, but because so just a claim has been so long neglected by the United States. Unused, as I am, to address the ear of this House, and notwithstanding the embarrassment under which (I am conscious) I in some sort labor, I dare believe that, if I am so fortunate as to have the indulgence of an attentive hearing, for a few minutes, I shall be able to satisfy the House, not only of the justness of these claims, but that they ought to be paid by the United States.

It may be thought that I have, in the prosecution of my object, to combat prejudices which are, perhaps, supposed to exist against these claims, in consequence of the several rejections of them by committees of this House, to whom the subject has been heretofore referred. No, sir, I will not insult this House by supposing that such rejections have dictated to them a decision upon this subject. I intend no disrespect to the committees who have heretofore reported against these claims; on the contrary, I cherish towards the gentlemen who composed those committees, sentiments of proper respect; indeed, I anticipate, with some confidence, that some of those gentlemen will review their decision upon this subject. If such rejections, however, are considered as amounting to an argument against these claims, in reply to such argument, I will only say, (and I presume it is admissible to say,) that the fact of the very favorable reception these claims have heretofore met in the Senate, together with the several reports made in this House, favorable to the claimants, should be received as a counter-vailing argument. The only ground upon which the Committee on Military Affairs found their rejection of these claims, is the assumption

that these claims were adjusted by the Treaty of Cession entered into between the State of Georgia and the United States, on the 24th day of April, 1802, which is a virtual admission that they were originally just. If, on a full investigation of this subject, it shall appear to the House that the expenses which were consequent on the services upon which these claims are predicated were not incurred by Georgia, then it will be acknowledged that they do not come within the description of expenses referred to in the Treaty of Cession, as that treaty referred distinctly to expenses which were incurred by Georgia. If they do not come within that description, they could not have been adjusted by that treaty. In the investigation of this subject, I propose to show to the House, that the Governor of Georgia, when arranging the defence of that State, (by which these claims were created,) acted under the authority and control, and as the agent of the President. If I succeed in this, it will be conceded by all, that the United States were bound to pay the expenses which were incurred during the continuance of such agency. I propose to show, also, that the United States are bound by constitutional principles, to defray all expenses incurred (subsequent to the adoption of the Federal Constitution) by military operations necessary to the defence of an individual State; and that, under the operation of the constitution, an individual State cannot be charged with such expenses.

And, finally, that the State of Georgia did, prior to the adoption of the constitution, incur expenses to a much greater amount than the sum stipulated in the Treaty of Cession, which expenses come much more properly within the description of expenses referred to in that treaty, than these militia claims, which were created subsequent to the adoption of the constitution by Georgia. If I succeed in either of the two last propositions, the motion now pending before the House must prevail. These militia claims are founded upon services alleged to have been rendered to the United States in the years 1792, '3, and '4, by certain detachments of the militia of Georgia, in defence of that State, against the Creek and Cherokee nations of Indians. At that time, Georgia presented to several warlike tribes of hostile savages, a thinly inhabited frontier of about four hundred miles extent; those savages had long cherished a hostile disposition towards the infant settlements of Georgia, and had frequently, before that period, indulged their savage thirst for blood, by desolating those young settlements, and butchering the defenceless inhabitants. At length, excited by their hope of plunder, and fired with jealousy and rage, by the artful representations of a few designing, discontented chiefs amongst them, the Creek Indians, especially at the commencement of the period to which this inquiry is directed, attacked the frontier settlements of Georgia with such fury, as seemed to threaten a total

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destruction of those settlements. The Governor of Georgia represented to the President of the United States the then critical situation of that State, which representation was supported by satisfactory evidence, that murders and depredations had already been committed on the defenceless frontier inhabitants—and in consequence of such representation, the Secretary of War, on the 27th day of October, in 1792, wrote to the Governor of Georgia, which communication contains this unequivocal passage: "If the information you may receive, shall substantiate, clearly, any hostile designs on the part of the Creeks against the frontiers of Georgia, you will be pleased to take the most effectual means for the defence thereof, which may be in your power, and which the occasion may require." Thus, the Executive of Georgia was clothed with full discretionary powers, and was constituted the judge of the necessity of calling out the militia, and of the force necessary to be employed. And in the exercise of such discretionary powers, we present to you conclusive evidence, that several detachments of the militia of Georgia were ordered into service, for the defence of the frontiers of Georgia, against an enemy common to the United States. The evidence on which the claimants rely for the support of their claims, is embodied in documents printed under an order of the House, and laid on your tables yesterday. The House will there find the correspondence between the Secretary of War, in the year 1798, and the then acting agent for the supply of the troops in Georgia, which shows that the agent had caused rations to be regularly issued to the militia, who now claim compensation for their service. And the report of the Secretary of War, made to this House upon this subject in 1808, informs us that regular pay and muster rolls, showing the service of these militia, have been received at that department under the direction of the President of the United States.

The evidence submitted must, I think, satisfy the House, as it has the Committee on Military Affairs, that the militia did perform the service for which compensation is now asked; and the amount due is not a matter of speculative opinion, for the estimates prepared and forwarded by the then acting agent for the War Department in Georgia, and now on file, ascertains the precise amount. Then, the service was performed. The individuals who performed it were, therefore, entitled to compensation. Such compensation has not yet been made, but is now due, and it is due from the United States; because, the Governor of Georgia, when arranging the defence of that State, acted under the authority, and as the agent of the President. The service was, therefore, rendered to the United States, especially as it was against a common enemy. Consequently, the United States are bound to pay the expenses which were incurred by that service. But I contend that the United States are bound, by constitu-

tional principles—principles perfectly independent of any agency which the President may have had in arranging the military defence of Georgia—to pay these claims.

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On motion of Mr. TRACY, the House again resolved itself into a Committee of the Whole on the bill further to amend the act authorizing payment for property lost, captured, or destroyed by the enemy, in the late war with Great Britain, and for other purposes—Mr. CAMPBELL, of Ohio, in the chair.

Mr. TRACY rose in reply to the speech of Mr. BARBOUR, yesterday. He observed that it was not his intention to have entered further into the debate on this question, than he had already done on the present as well as at former sessions. He did hope that of those who thought with him on the subject of this bill, there would have been enough on every side to have sustained its cause. He was well aware that his situation, as the representative of the sufferers, detracted much from the weight of any thing he could advance on the subject; but, as he found himself left alone to sustain this controversy, he could only regret that the task had fallen on one so very inadequate to do it justice.

Mr. T. then went into a consideration of the principles of national law, as they had been laid down by the gentleman from Virginia, with the most of whose positions he felt inclined to coincide. He did not think, he said, of maintaining that Government was bound to pay for all losses suffered in a state of war—but only in the very case in which the gentleman from Virginia had admitted this obligation, viz: when the character of property was changed in consequence of military occupancy. He might, indeed, object to the gentleman's doctrines, that a Government such as ours is not bound by the same rules as the ancient despotisms of Europe. But this was not necessary. He would meet the gentleman on his own ground. If Government changed the character of the property, and in consequence of this change, it was afterwards destroyed, the Government is bound to pay. On this ground he was willing to rest the claims of the Niagara sufferers. He here referred to the report of the committee printed at a former session on this subject, as containing evidence that the destruction was in consequence of the connection that Government had with the property. He insisted that the sufferers were not bound to show that the destruction was on the allowed principles of civilized warfare; and to sustain the title to indemnity by individuals who suffered loss, it was sufficient to show that it was caused by the public use of their property. He confessed himself unable to discover, with any precision, what the usages of civilized war were, as applied to this subject. He understood the gentleman from North Carolina, (Mr. WILLIAMS,) as maintaining that the destruction of Newark by the American troops

was a justifiable act. [Mr. WILLIAMS explained, that he had only referred to the report of Gen. McClure.] But whether it was, or was not, the enemy themselves had *avowed* that they destroyed the buildings because they had been used and occupied by our army.

He would, however, endeavor not to be diffuse in what he had to advance. His object had yesterday been, and still was, to show that the principle of the measure contemplated by the bill was defensible on two grounds: 1. That the Government was, in this case, bound by that sort of obligation which had properly been stated by the learned gentleman from Virginia, (Mr. P. P. BARBOUR,) as an imperfect obligation, and which, though it certainly did not go to the extent of a perfect and legal obligation, was nevertheless to be recognized as binding to a certain extent. But, secondly, and principally, that the Government was bound by an obligation in all respects perfect; so perfect, that, if the same obligation existed between two private individuals, it might be pursued and enforced in a court of law.

On the first of these points, he felt assured that the peculiar circumstances of those whose cause it was his duty to plead, and for whose sufferings a remedy was proposed by the bill, must, when duly considered, be owned to create an obligation which, though it might not be of a legal kind, was nevertheless something more than a mere appeal to humanity. Were it, indeed, no more, it ought not to be disregarded; for a Government is in this respect, in the same situation as a private individual—it must be humane, if it can, even where no connection whatever has previously existed between the sufferer and its own acts. Suppose, for illustration, that the Niagara frontier, instead of being wasted by a savage enemy, had suffered equal injury by an earthquake. Could there be a question, that, in such a case, there would exist an obligation on the Government to afford what relief was in its power? Could he not refer to more than one example in which the Government had done this, not only to its own citizens, but even to foreigners? The people of New Madrid, in Missouri, when suffering from the effect of earthquakes in that portion of the Union, had received relief from the Government; and even the people of Venezuela, who resided at a distance from our boundary, had been relieved by the Government, in a still more liberal manner. Would any one deny that the Government in this case performed a duty? The principle, then, of abstract benevolence, had attached to it a certain degree of obligation.

He presumed it was unnecessary for him to go into a long detail of facts to prove to the committee that the sufferings on the Niagara frontier had been of a most poignant, severe, and aggravated kind. Whoever had the least knowledge of the history of the war, could not entertain a doubt on that subject. So far as extent of human misery could go in giving

validity to any claims, these were most abundantly established. The gentleman from North Carolina had, indeed, said, (he took no notes of his speech, but quoted from it as reported,) that he had been credibly informed that that frontier had been, on the whole, rather benefited than injured by being made, to the extent it was, the seat of war. Now, the gentleman might have been credibly so informed, but he could assure him not correctly. There could be no greater mistake than to say that that region had been benefited by the war. If the gentleman gave the least credit to history, he could not but know that the reverse was true—that, instead of being benefited, it had suffered the utmost injury and distress by the war. The gentleman had said, that great opportunities were enjoyed of making money there—that the highest prices were obtained for commodities, and large amounts of public money expended. He would not deny that, as to a certain portion of the country in the neighborhood of that which was the immediate scene of war, this, to a certain extent, might be true; but this fact, unhappily, increased instead of diminishing the suffering of these claimants. It was the highest aggravation of their sufferings. The highest prices were given for produce—but these persons were not agriculturists. Flour was, indeed, selling at forty dollars per barrel—but they raised none. Those of them who owned farms had their farms immediately on the border utterly wasted. All pursuits of agriculture were interrupted, and the dearer provisions were, the worse it was for them. They had to buy—not to sell. There was, it is true, a great influx of public money—but they got little or none of it. The country farther back from the enemy might be enriched—but they, instead of being enriched, were ruined.

The argument, that payment for such losses would induce an enemy to make universal desolation of private property, in order to ruin the financial means of the Government, was equally unfounded. In addition to the fact, that the Government would make the indemnification after the war was closed, and when the revenue resources would justify, it might also be observed, that the motive which restrains an enemy from acts of wanton desolation, is not, that the loss by the citizen is not as distressing to the country as a loss by the Government, but the fear of retaliation, the abhorrence of the whole civilized world, and, he hoped, a proper sense of human rights, which civilization and Christianity had produced, afforded the only protection against such outrages which a Government could rely upon.

In illustration that this principle of indemnification was not so altogether new as the gentleman had supposed, Mr. T. alluded to the fact, that the British Government had given to their Canadian subjects on the Niagara frontier, about \$800,000, and had adopted other measures, by which a remuneration to the full extent of their losses was making. He then proceeded

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to show why the claims of our citizens on this Government were much stronger than the Canadians were on theirs. In their case, there was no pretence of a perfect obligation; it was never pretended that the destruction of their property was occasioned by its occupation by the British; they had spent millions to defend them, had not brought the war to their doors, and had had no connection with them, except for the purpose of defence. But, with our Government, the case was totally different. Is the obligation of this Government to our citizens less, or its sympathies more cold, than the British Government, to its remote colonial subjects?

Adverting to the debate of yesterday, Mr. T. quoted the observation of Mr. BARBOUR, that if, by any act of the Government, individual property was withdrawn from its pacific position, by the Government, or invested with a warlike character, the Government was bound to indemnify the owners for any loss they might sustain by that act. So far the gentleman from Virginia—who had thus acknowledged, that if the pacific character, which personal and individual property has attached to it, is changed, there is created, on the part of the Government, a distinct obligation, which he called a perfect obligation—such a one as, between individuals under similar circumstances, could be enforced in a court of justice. Now, I do firmly believe, said Mr. T., that the case of the Niagara claims is altogether sustainable upon this position of the gentleman from Virginia. That gentleman has come to the conclusion, indeed, that these claims do not come within his definition, but without any reference to the facts to see whether they do so or not. The proposition which I make is affirmative, that they do come within it, and I expected that the gentleman would have endeavored to show that they do not. But he did not do so. He seemed, after establishing his case of perfect right, to take it for granted that these cases had nothing to do with it, whereas, the circumstances of them do refer them to the very principle which the gentleman laid down.

The true question for the House to determine, in regard to these claims, said Mr. T., is, was there any act of this Government, relating to the property destroyed, which induced a change of its pacific character, and clothed it with a warlike character, and did that change produce its destruction? If this change was thus effected, it is a rule, prescribed by common sense and justice, admitted by the gentleman from Virginia himself, that the claimants ought to be indemnified. It is not for us to dive into the recesses of the human heart, to search for the motives which led to that destruction of property. For, if there was a just cause for this destruction of property by the enemy, we ought not to advert to other transactions, in other times and places, to account for it.

In regard to the general nature of the operations on the Niagara frontier, during the late war, Mr. T. proceeded to show, that they were

such as to change the character of the whole of the property on that frontier, from a pacific to a belligerent character. The House ought to bear in mind always, that our military operations on that frontier were of an offensive character, because he thought that consideration placed these claims on ground to make the argument in their favor conclusive. Our troops were not carried there to protect the frontier from invasion by the enemy. That was not the purpose, nor the object of the collection of the troops there. If the Government had not, for its own purposes—wise ones, no doubt—chosen to make that border the theatre of war, there was no human probability that there would have arisen there any of the consequences which did actually occur. Of one fact in regard to this matter, there could be no doubt, namely, that the Government was, as a Government, totally destitute of any public property on that frontier. They had neither barracks, nor hospitals, nor arsenals, nor warehouses for the deposit of public property. Yet the Government chose to carry on offensive war from that frontier, by a continued series of invasions of the territory of the enemy. For all the purposes of hospitals, barracks to shelter the soldiers at all seasons of the year, depositories of public stores, &c., they had to rely on the buildings of the inhabitants, which they made free and general use of. When these things were considered, Mr. T. said that it would be discovered that the notoriety of this fact must have established, in the mind of the enemy, a positive conviction, that the offensive movements on the part of our troops, were entirely dependent on the use of individual property, and that measures of defence against this warfare must include the destruction of that property. It was thus that property on that frontier acquired a belligerent character. If the Government had had, as, in theory at least, it ought to have had, places for the protection of its property, and barracks to shelter its troops, whenever it carried on its military operations, and those places had been occupied, instead of the private buildings, by the troops and stores of the army, then the destruction of the private buildings would have assumed a very different character. The policy of the Government, however, having made this ground the scene of war, without these ordinary appendages to a military frontier, the houses of individuals were made to serve the purposes of public buildings.

What, Mr. T. asked, was the natural conclusion of the enemy from this state of things? They reasoned to themselves, that, in destroying these buildings, thus used, they would not merely destitute that frontier, but protect their own territory. This was the unanswerable conclusion to which, upon the facts before them, military men would necessarily come.

In this view of the subject, a character was given to the property thus occupied for offensive purposes, different from that which it would have borne, if occupied for defensive

purposes only. If, for example, said Mr. T., the enemy had come to invade the city of New York, and we, for the defence of the city, had taken possession of private buildings, I should say that the right of the enemy to destroy those buildings, would be very different from that which he held in regard to those buildings on the Niagara frontier, which our troops occupied for offensive purposes.

Mr. T. closed by observing that, in relation to the motion to strike out the first section, he hoped, if gentlemen were determined nothing should be done for these claimants, that they would vote for the motion, and put them out of their pain. In regard to this bill, though he felt the common affection of paternity for it, he was not tenacious of its particular features: he was willing that it should be amended if desired. His constituents, these claimants, had been tantalized so long with hope and expectation of relief, that he hoped a final decision would now be pronounced on the case. If, in defiance of justice, reason, and equity, gentlemen were disposed to refuse the claimants any indemnity whatever for their losses, Mr. T. hoped they would vote for the pending motion, and at once put an end to the bill.

On motion of Mr. VANCE, of Ohio, the committee then rose, and obtained leave to sit again.

THURSDAY, December 30.

*Communication to Lafayette.*

On motion of Mr. ARCHER, of Virginia, it was

*Resolved*, That a committee be appointed to unite with a committee from the Senate in announcing to General Lafayette the passage of the act concerning him, which has just been approved, and to express to him the respectful request and confidence of the two Houses of Congress, that he will add his acceptance of the testimony of public gratitude extended to him by this act, to the many and signal proofs which he has afforded of his esteem for the United States.

*The Illinois Canal.*

Mr. COOK, of Illinois, moved the following:

*Resolved*, That a committee be appointed to inquire whether any, and if any, what provision it will be proper or practicable to make to aid the State of Illinois in opening a canal to connect the waters of Lake Michigan and the Illinois River; and that said committee have leave to report by bill or otherwise.

Mr. COOK, by way of explanation of his views in moving this resolution, as it was rather out of the usual course to propose to refer such a subject to a select committee, made one or two suggestions. A year or two ago, he said, Congress passed a law granting to the State of Illinois certain privileges in relation to land through which the proposed canal is to pass. The State took all the necessary steps to avail herself of these privileges. But it was not likely that the State, from its ordinary means, could carry this measure into effect. Congress have given to the State of Illinois a certain pro-

portion of the net proceeds of the sales of the public lands, for the encouragement of learning; and a portion of the public lands within the same State for the same purpose. If no better means should present themselves; if the Government of the United States should not consider this canal, in a national view, of so much importance as to construct it at its own cost, the State might be allowed to convert its school lands into a fund for the purpose of making the canal, and to apply the toll from the canal to the school purposes, thus merely changing the land into a canal stock, the profits of which to be applied to the same purpose as the land is to serve—of encouraging learning. There were a variety of views which Mr. C. said he could present to a committee on this subject, and to the House upon a proper opportunity. This canal was really a *national* object, worthy of the employment of the national means. But, if this House should not consider it so, means to execute it might be placed at the disposal of the State by the measure which he had suggested.

Mr. ALLEN, of Massachusetts, was opposed to the reference of the resolution to a select committee. He thought that it properly appertained to the Committee on Roads and Canals, who were perfectly competent to dispose of it; and he moved, as an amendment, to substitute the Committee on Roads and Canals for the proposed select committee.

The question was then put on Mr. ALLEN's motion for amendment, and carried—ayes 63, noes 57.

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The House having resumed the consideration of the bill on this subject—

Mr. VANCE, of Ohio, then rose and said, that it was with reluctance that he presented himself before the House on this subject—and his doing so might perhaps demand from him some apology to those gentlemen, who, coming from the State where these claimants resided, were more particularly connected, by their situation, with the present bill. But he had risen, because he had had, in his own person, some opportunity of an acquaintance with the facts of the case, and such was their impression upon his own mind, that he felt confident there was not a man on that floor, let him come from the North or the South, from the East or the West, who, if he knew the sufferings of these claimants, would not be in favor of granting them relief. The assertion might be thought a bold one, but he felt no hesitation in making it, and he now repeated that, had gentlemen been eye-witnesses to what was suffered on that frontier, not one would refuse to relieve the sufferers. On most subjects, he felt as much disposed to economize the public resources as any member of this House; but he could never consent that, when he who had thrown open his door to receive a suffering, perishing American soldier, and in consequence of his hospi-

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tality he had had his house burnt to the ground, asked compensation from the American Government, he should be sent away unaided. Mr. V. said he felt his inadequacy to do justice to the subject, or to his own feelings, and he well knew that, after the able speeches which had been made in opposition to the bill, from men of the first standing in the country, whoever rose to advocate it, must expect to row against a strong current. But if the arguments of those gentlemen are not more specious than sound, he was greatly mistaken.

But, sir, has the gentleman (Mr. WILLIAMS of N. C.) forgotten our federal character? Is each part of this country, and is each man in it, to protect himself? Is such a doctrine as this preached to us by the gentleman? Is the interior to be paid for marching to defend the frontier? Sir, if that gentleman should march from Norfolk to defend the most distant part of our frontier, he would only be marching, in effect, to defend himself. It is an acknowledged maxim, that it is better to fight an enemy in your neighbor's ground than on your own; and if the gentleman refuses to march to defend the frontier, when it is attacked by an enemy, he will soon find the frontier at his own door. The war which he refused to combat at a distance, will come home to his own threshold.

The next argument of the gentleman was, that the people on the frontier were not so much to be pitied as they would have it believed; that they have not suffered so very much—nay, have rather been benefited by the war. Sir, I will say, that if that gentleman knew what was the true state of facts on the N. W. frontier generally, he would never have uttered such language. But, sir, he does not know it—the country does not know it—the country never will fully know it—the truth was withheld at the time from motives of policy—and, except to eye-witnesses, it can never be known. I might appeal to the first men of this nation for my truth when I say, that while the American army was lying at the French Mills, three men out of five who had slept in one tent, were more than once drawn out in the morning dead, being literally frozen to death for want of covering. The gentleman from North Carolina lives, himself, in a mild climate; but if he had seen that army encamped in the midst of snow more than three feet deep, and not half clothed, he would talk and feel differently. Sir, it was as necessary to give that whole district a military character, (so far as admitting the troops into the private houses could do this,) as it was to provide clothing or subsistence for your army; and the enemy had as much interest in the destruction of the houses, as in that of your magazines. And, if losses sustained under such circumstances, do not call upon us for relief, I do not know what does, or can.

We have heard, said Mr. V., in continuation, much from the gentleman from Virginia, (Mr. BARBOUR,) about perfect and imperfect obli-

tion. But I appeal to that gentleman, himself, to say, whether there may not be some cases where an imperfect obligation is stronger and more perfect than perfection itself? Yes, sir, I repeat it—more perfect than perfection itself. I think, after the vote that gentleman gave in the case of Lafayette, he cannot deny this. Let me say to that gentleman, that, in the village of Buffalo, he might on one day, have found a family well housed, well clothed, surrounded with every comfort of life, who, from its hospitality in throwing open its doors to the American soldier, was the next day houseless and homeless, destitute of all things; if he had chanced, eight months afterwards, to be wandering on the flats of the Ohio, he might there see a family scarcely covered by a wretched hovel, in squalid poverty, one day shivering with ague, and the next consumed with raging fever; if his compassion should lead him to enter and inquire into their situation, he would hear them say, our father lived in plenty and comfort on the Niagara frontier—he saw the American soldiery ready to perish—he opened his door to take them in—and for that we are here, ruined, and in wretchedness. Sir, the sufferings of the French, on their retreat from Moscow, present not too strong a picture to convey a just idea of what was endured while the whole country on the Lakes was converted into one wide cantonment. Other districts suffered as well as Niagara, but none, by any means, in so great a degree. Had the gentleman seen an American regiment on that frontier drawn up on a frosty morning, and supporting arms while their limbs were chilled to the bone, standing, in their thin cotton dress, in snow two and three feet deep; had he seen these claimants opening their houses to receive men in immediate danger of perishing, (many of them did perish,) and afterwards turned out of house and home for doing it, he would not, he could not, deny that something ought to be done for their relief. I will not undertake to say how much, or in what way, but I do say that this House ought to do something. Sir, if we can get nothing from perfect obligation, we will accept it from imperfect, from charity if you please, but I do hope you will give it in some way.

Mr. REYNOLDS, of Tennessee, next rose, and observed, on rising, that it had not been his fortune to witness the scenes which had been so handsomely depicted by the gentleman from Ohio; yet he had feelings and principles, and though he did not attempt to urge his own opinions as arguments upon the House, he thought it proper to assign his reasons for voting in favor of the bill. Much complaint, said he, was made of the law of 1816, and we were told that, in that act, the House had gone beyond all principles of the law of nations; and on similar grounds, we are warned against the present bill because a similar one is not to be found in the codes of foreign nations. But, admitting such to be the fact, our own statute books furnish a sufficient precedent. Look, said

Mr. R., at the horses, the bridles, the saddles, for which we have paid in the West; look at the negroes for which we have provided indemnity in the South. Are we to stop here? Shall we not provide something for the case of these suffering claimants in the North? We are told that the act of 1816 has impoverished the Treasury—but where, asked Mr. R., has the money gone? It was the people's money, and it has gone back to the people—it circulates at home. What injury has it done? Is not the country as flourishing at this moment as any country on the globe? Look at the condition of the Treasury. Can we not, through the able management of that Department, boast of a balance of three millions? It was the object of the law of 1816, not to reward the services of the citizen; it did not attempt that—but only to repair the losses he had endured in the service of his country. By carrying that law into effect, we shall hold out to the world that our country is grateful to those who serve her, and pities their distress. We shall enable the old warrior to say to his son: I have fought for a grateful country—go and do likewise.

Those who suffered from the military occupation of their premises, during the war, were surely as much entitled to relief as those who lost a horse or negro.

Here Mr. R. adverted to the evidence of the sufferings on the frontier as already placed before the committee—to whole villages occupied by our own troops, and by the burning of Newark, exposed to the vengeance of an irritated and powerful enemy. Adverting to the letter of Secretary Armstrong authorizing that act, he said, let us not stand on names—he was the organ of the Government—the head of the War Department, and, as such, his letter authorized the burning of that village.

Mr. R. said he had had the honor of participating in the passage of the act of 1816—for he had witnessed all the steps of this claim since its first introduction—he had heard his friend from Kentucky say, and with too much truth, that the privilege of those sufferers to present their claims to this House, would be a privilege to have their claims rejected. Sir, the event showed that he had spoken like a prophet. We have lately done one act of justice to a foreigner—an act in which I am proud to say I had the honor and happiness of participating by my vote—let us now do another to our own citizens.

Mr. NEALE, of Maryland, then rose, and said, that as he had been one who assented to the present bill, it might not be deemed an intrusion upon the time of the committee, to state some of the reasons that had governed him in doing so—and, as the law of nations had been frequently referred to by the gentlemen who were opposed to the bill, he asked to be permitted to read from an approved writer, what was the language of the law. [Mr. N. here quoted Vattel, to show, that where property was destroyed by a nation's own Government, or its order,

houses are removed to erect a fortification, it must be paid for by the Government—as also what that writer says respecting injuries by an enemy, and debts of imperfect obligation.] This, Mr. N. observed, was national law, as recognized by European nations; and here a distinction was made between injuries inflicted deliberately, and those by accident—the one created a perfect obligation on the Government for remuneration, the other appealed to the charity of the nation. By referring to the acts of 1816 and '17, it would clearly be perceived that the principle was established, viz: that if the Government occupied property, and made use of it for military purposes, and it was then destroyed, the United States must pay for it. Those acts created a perfect obligation. And was not this a just principle? And if it were not enacted then, ought it not to be now? Whether the United States destroyed the property itself, or by its act caused the enemy to destroy it, was immaterial. Such a case does not come under that clause of Vattel, which refers to accident. The occupancy is a deliberate voluntary act, and the law of 1816 and '17 says, that the Government must pay for the loss in such case. The reason of the law is, as has been stated, that property, while possessing a private and pacific character, is not liable to injury by the enemy, according to the rules of civilized warfare, but, as soon as the Government gives it a public and belligerent character, it is. Now it is necessary that the motive of the enemy in the destruction of any particular portion of property should, in some way, be established. But the acts of 1816 and '17 do not allow that the fact of its public occupation by Government shall be presumed to be of sufficient proof of this intention or motive of the enemy; the present bill does allow this: it remedies, in this respect, the great defect of the former laws. If the occupancy and the destruction are proved, it is enough—the one is presumed to be the reason of the other. In many cases it would be impossible to prove the motive of an enemy in any other manner.

Mr. BUCK, of Vermont, said, that he did not rise to debate the general principle of the bill, but to correct a material error in point of fact. The error was so important, that, when it was shown, it would appear that the advocates of the bill had been going wholly on an assumed state of the facts, which in reality had no existence. The gentleman who introduced the bill went so far as to say, that he rested the cause of the claimants on this one point, viz: that the reason of the destruction of property had been its occupation by the Government; and, having established the fact of such occupation, he seemed to conceive that the claim was made out. But, Mr. B. said, he had in his hand a document to show conclusively that the ravages of our frontier were not caused by the occupancy by our army, but were inflicted entirely on a principle of retaliation, in consequence of the burning of Newark. This docu-

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ment was the proclamation of Gen. Prevost, the officer who commanded the British forces at the time, and who, he believed, directed, and in person superintended, the work of destruction. [Here Mr. Bux quoted the proclamation, in strong terms denouncing the conduct of this Government, and justifying the devastation of the Niagara frontier.] Thus it appears that we are not driven to presume the motive of the enemy; we have it in express terms, declared by himself. He should not attempt to discuss the subject at large—he thought such a representation of facts as was contained in the testimony, coming almost wholly from parties interested, was not to be put in competition with a public document such as that he had just quoted. This changed the state of the question. It was not now to be settled, whether this Government was bound, because its acts had changed the character of the property—but whether it was bound to remunerate the sufferers for injuries inflicted by the enemy on a principle of retaliation. On this discussion, Mr. B. said, he should not enter, but only observe, that, if we admit that payment is to be made on the principle of retaliation, we, having been the beginners, by burning Newark, are of course bound to pay.

Mr. STORRS, of New York, rose to call the attention of the House to what were really the facts of the case now before it, however perverted by the document which had just been quoted. It was true, he said, that, in that proclamation, the pretext for the devastation of the Niagara frontier was the destruction of Newark, but, in his judgment, it never was the real cause of it. Whoever looks to the situation of that frontier, and the history of the war with Great Britain to that period, must be satisfied that that document deserves no other character than that of mere hyperbole. It was not issued until *after* the burning of the Niagara frontier, when it had become necessary to give to the civilized world some plausible pretext for such an act as burning that frontier. Mr. S. reviewed the facts which attended the destruction of Newark, &c. We had considered the Niagara frontier generally as a point from which the Canadian frontier could be most easily invaded. We had made the experiment, not without the loss of blood. The enemy had similar objects on the Northwestern frontier. Our advances on the Niagara country were in some instances intended to create a *diversion*—to distract the attention of the enemy, and turn him from the invasion of the frontier of Ohio, to the protection of his own territory. One great object of the invasion by us of the Niagara frontier, he had always understood, was to protect the frontiers of Ohio, and of the States west of it: and he had himself no doubt that one great object of the devastation of the Niagara frontier by the enemy, was to prevent its occupation as a military station, from which Canada might be invaded. When Newark was burnt, the British commander, who sought for a pre-

text for the destruction, thought he had found it in the burning of Newark; by availing himself of which, he could throw the odium of his conduct on the United States, whilst his real motive was very different from his avowed one. That, said Mr. S., was the real history of the proclamation, which was relied upon as an argument against the claimants now before the House. Their object was to secure themselves from our incursions. They accomplished it: they did, by the devastation of the Niagara frontier, secure themselves, until a larger and better appointed force penetrated their frontier, &c.

The committee then rose, reported progress, and obtained leave to sit again; and  
The House adjourned to Monday.

MONDAY, January 3, 1825.

*Lafayette.*

Mr. ARCHER, of Va., from the Joint Committee appointed to communicate to General LAFAYETTE the act passed for his benefit, asked and obtained leave to report—when he submitted copies of a letter from the committee to the General, and his reply, (as will be seen in the account of the Senate proceedings,) which, on motion of Mr. CONDIOT, were entered at large on the Journals of the House.

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The House then proceeded to the order of the day, and went again into Committee of the Whole, (Mr. CAMPBELL, of Ohio, in the chair,) on the bill for the relief of the Niagara sufferers.

Mr. CADY, of New York, then rose, and observed, it was but seldom that he obtruded himself upon the attention of this House, but being a citizen of the State of New York, and having had an opportunity of knowing something of the merits of the petitioners in this case, he could not consent to give a silent vote. I once, said Mr. C., entertained an opinion nearly similar to the one expressed by the honorable gentleman from North Carolina. I once believed that exaggeration had magnified the sufferings and multiplied the losses of these petitioners—but, sir, that day of ignorance has gone by. It was once my duty, in the Legislature of New York, to examine this subject, and I do assure the honorable gentleman from North Carolina, and this committee, that, as regards the losses of these petitioners, and the miseries they endured, the truth has never been half told. I am not now disposed to enter into a disquisition whether this claim is to be classed under the head of a perfect or imperfect obligation; the black-letter reading of Coke or of Blackstone, will have but little influence in determining my vote. Nor, sir, shall I consult the musty pages of Grotius or Puffendorf, to know for what losses those gentlemen are pleased to say, Governments are bound to pay. But, sir, I have asked my conscience whether I believe this Government ought to do something for these claimants, and whether we are prohibited from doing it. I have also read the



constitution of my country, and in the preamble I am told that it was adopted "to promote the general welfare." I believe our right to do something has not been disputed. Why not then do it? One honorable gentleman seems to suppose that the occupancy by our army of the buildings destroyed, was not the cause of their destruction. What then, supposing it to be true, will you furnish no relief?

I have been instructed by the Legislature of New York, of which I am a citizen, to advocate these claims. I do it most cheerfully, regretting only my feeble powers. She asks you to alleviate, in some degree, the losses of a portion of her citizens. She has long since extended her charitable hand—she asks you to do equal and exact justice—she has seen you pay for losses in the West and in the South—she has seen your western dragoons remounted, and the negroes of the southern planter restored. Will you now listen to her application? Are there any more "constitutional objections" in the way? I well remember the time when she applied for your assistance, in the formation and completion of a work which history has already recorded as the proudest monument of the age. But, sir, I do not wish to digress; rest assured, that, in the State of New York, from Erie to Long Island, there is a universal prayer that we shall do something for these Niagara sufferers. If gentlemen suppose the bill to be too broad, let us amend it in the spirit of charity—let us say, "come let us reason together," but do not let us any more, with a cold tombstone charity, say to those suffering petitioners, "be ye fed and be ye clothed." The honorable gentleman from Ohio has, in a warm, vivid, and glowing manner, peculiar to himself, described some of the sufferings of these petitioners. About two hundred inhabited dwellings were entirely consumed; they contained, probably, upon an average, from six to eight souls. From 1,200 to 1,800 hundred human beings, with the aged father, the helpless mother, the infant in the cradle, were involved in one promiscuous labyrinth of woe. At that most inclement season, when the cold northern blasts of winter chill to the very soul, were these claimants bereft of a home, without a shelter but the broad canopy of Heaven, the cold earth their bed. Their sufferings may be imagined—they cannot be described. Many, to be sure, have gone to their long home, but many still remain looking up to us, and fervently imploring us to alleviate, in part, their distresses. Let us do it; we need not fear the consequences. No nation ever suffered by doing great, humane, and generous acts. They tend to engage the affection, and rivet the attachments of the people. Let us, then, sir, do something worthy of this nation, and rest assured that the American people will not only hail you as upright and able statesmen, but also as noble, generous, and charitable.

Mr. STORES moved to amend the bill by striking out that clause which grants indemnity, provided the property "*had been at any time during the war*" in the occupation of the United States, and substituting the proviso, that it was in such occupation "*at the time of its destruction, or immediately before.*"

Mr. FORSYTH, of Georgia, observed, that he did not think he correctly understood the object of the amendment. He went into a recapitulation of what had previously been done on this subject—the act of 1816—the powers of the commissioner—his decisions—the interposition of the President, and the subsequent act of 1817. By this act, it was required to be proved that the property was occupied by order of an officer of the United States; and, as he understood, all the claims which had been brought under the provisions of this act had been paid. The object of the claimants now seemed to be to undo the restrictions of the law of 1817, and restore them and their claims to the same state as they were under the act of 1816. Now, the act of 1816 had been extended by the commissioner to all property occupied with or without an order of any United States officer—and, if such was, in any way, the object of the present bill, or of the amendment, he should be opposed to it in toto, knowing, as he did, the abuses to which the extraordinary decision of the commissioner would have led.

Mr. MARVIN, of New York, rose, in reply, and said that it was not the object of the present bill, or of the amendment, to establish any new principle. He thought the gentleman from Georgia had not stated the case quite fairly. It was true that the commissioner's proceedings had been arrested, and that a new law was passed, establishing a different rule of adjudication, and empowering him only to examine and report. Under this law, a new commission issued to two members of this House, and another gentleman of great talents, to whom was added an agent of the United States. These gentlemen repaired to Niagara, and, in their examinations and report, were governed by the law of 1817. They took ample testimony—they made a detailed report—they did both by the authority of this House; but there their powers stopped, and there this House stopped also; for, after receiving that report, nothing had been done—not a dollar was granted for settling the claims. Last session, a committee, indeed, had been appointed to inquire what it was proper to do in the matter, and the report of that committee is before the House, and they propose the present bill, not to set up any new principle, but merely to carry the former acts into effect. Why did the House order them to report, if it was not intended to follow up their report with some corresponding measure? Not one of these claims had been paid since 1817, and they were so numerous that it was utterly impracticable for Congress to deliberate upon them singly. Some general act was requisite to carry the

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rule the House had laid down into some practicable effect. Such was the simple object of the present bill. Its friends, indeed, did wish to get rid of an objectionable phrase in one of the former acts on this subject, which provides that the occupancy of the property must have been the cause of its destruction. Under that law, if a claimant comes and proves both the occupancy of his dwelling by United States troops or magazines, and its destruction by the enemy, he is answered, "Ay, but you have not shown that the one was the cause of the other." If he attempts to prove this by inference, it is objected that the destruction was on a principle of retaliation for the burning of Newark. If he attempts to show that whole villages were burnt, he is again told that neither the occupancy by United States troops, nor the burning of Newark was the cause, but only the predatory character that marked British warfare in former wars as well as the present. The claimant is sent to examine the mind, and to probe the conscience of the enemy, and tell what his true motives were. It was from such a requirement that the present bill sought to free these unhappy sufferers, many of whom had endured a second desolation in consequence of the legislation of this Hall. The acts of 1816 and 1817 led them to expect indemnification; and the expectation was a just one; it was founded in their confidence in this House, and the execution of its laws. In consequence, they had begun to rebuild their burnt buildings, and had incurred responsibilities by doing so. The execution of those acts was suspended; the time of payment for their repairs came round. The same citizen who had once been stripped by the enemy, had to see his property a second time swept away by judgment and execution.

Mr. MEXOKER, of Virginia, said, upon the question whether the laws of civilized war justified the destruction of the Niagara frontier, he expressed the decided opinion that the usage of civilized nations did not justify it. He defied any one to put his finger on any passage in any esteemed writer on National Law, or on any page of history, in which such a transaction was reconciled to the principles of lawful warfare. So far from a belligerent being entitled to destroy private dwellings because of their being or having been occupied by its enemy, Mr. M. maintained the reverse to be the law. The most fertile and populous countries of Europe, he remarked, had been most frequently the theatres of war—Flanders and Lombardy, for example, the cock-pits of Europe, in which France and Germany had so often contended for empire. Of the ravages which would have been made of these beautiful countries, if the principle now suggested had been acted upon, he drew a vivid outline, concluding by saying that, by the conduct of her commanders on the shores and frontiers of this country during the late war, the arms of Great Britain had been stained with a disgrace which it would take a

century to wipe off. There existed, he argued, no such right on the part of a belligerent, as the right to destroy private houses, or individual property, from which an enemy has been driven. If such a right had been admitted and acted upon in Europe, what would have become of the splendid buildings dedicated to military purposes, or of the private buildings occasionally employed for them? He expressed his surprise to find gentlemen in this discussion transferring themselves to the Niagara frontier, as if their general principles applied there only, instead of sweeping the whole continent. He illustrated the principle which had been laid down on this subject, by applying it to the city of New York, if, in any future war, an enemy should obtain possession of it; and demanded if the right to ravage that city with fire could be derived from the fact that troops called in for its defence were quartered in private buildings. Upon the whole, he concluded that it would be neither just nor wise for this Government to recognize any such principle as the right of an enemy to destroy private property because it may have been employed, for a time, either for military deposits, or for barracks.

With regard to the distinction which had been drawn, as to the right of the enemy to destroy private property, that the war on the Niagara frontier was, on our part, an offensive war, Mr. M. remarked that, whether a war was offensive or defensive, must be determined by its *origin*, and not by any particular incident of the war.

Mr. DWIGHT, of Mass., said he did not rise to enter into the discussion of the general question upon the merits of the bill, as it originally stood; to that bill, unmodified, he was himself opposed. But, limited, as it now was, by the amendment of his honorable friend from New York, (Mr. STORRS,) to the destruction of buildings or other property in the actual occupation of our own Government, at the time of the destruction, he gave his most hearty co-operation. He rose merely to point out an error of the honorable gentleman from Virginia, (Mr. MEXOKER,) who had just taken his seat, and upon which the argument of the honorable gentleman against the present bill seemed entirely to be founded. That is, that the laws of 1816 and 1817, in behalf of persons who had property lost, captured, or destroyed, by the enemy during the last war, were not founded in principle, and went further than the Government were bound to go in relief of individual distress. To show that the error was in the laws of 1816 and 1817, and not in the administration of them, the honorable gentleman from Virginia had attempted to show that the commissioner, acting under the authority of those laws, had invariably been guided by the opinion of the Government, as to the extent of the allowances which he was to make. To support this position, the honorable gentleman had read a part of the correspondence between the Commissioner and the Secretary of the Treasury, as to the extent

of his ability to make allowances. And thence, the gentleman had induced the belief that, because the commissioner had consulted the Government, he had, in all instances, been governed by the result of that consultation. So far indeed was this from being true, he was himself prepared to show, from the documents which the honorable gentleman had just read, that the Secretary of the Treasury had, in his answer to the commissioner, confined relief to the destruction of buildings actually in the occupation of the Government for military purposes. The committee were not ignorant, that, so far from this salutary principle being the governing one, the commissioner had allowed some thousands of dollars in one instance to be paid for a building in the city of Washington, in regard to which the proof was by a British deserter, that it was destroyed by the enemy because a single musket was found in one of the apartments. He might add, he said, other instances of a wide departure from what was now considered the spirit of the laws of 1816 and 1817. They were, he presumed, fresh in the recollection of gentlemen who were, unlike himself at that time, conversant with those proceedings. He would ask the honorable gentleman if the policy of the laws of 1816 and 1817 were so generally questionable, why they had not been repealed? It was true, he admitted, that the President had long since suspended the powers of the commissioner. But that had not repealed the law. The President, indeed, had no more power over that repeal than the humblest individual of the nation. He appealed to the committee for the correctness of the assertion, that the universal public feeling at that time was, that the decisions of the commissioner (though he had no doubt they were honest) would involve the Government in payments which it was not in contemplation of the laws of 1816 and 1817 to make them responsible for. The fact that the laws now remained unqualified and unrepealed upon the statute-book, was unequivocal evidence of the correctness of their policy; while the suspension of the powers of the commissioner at that early period, by the President, went as clearly to show that he had not, in the opinion of the Government, been guided by a sufficiently cautious policy in the administration of those laws. He would submit, then, he said, to the committee, the question, whether the honorable gentleman was authorized to found an argument against the present bill, upon a supposed resemblance to the laws of 1816 and 1817.

Mr. BUCHANAN, of Pennsylvania, said, he rose to make a few observations on the bill before the committee, which he would not have done, had his views of the subject been exhibited by any other gentleman. He said, he would state, as a clear proposition, which had not been much disputed in the course of the discussion, that this Government was bound, as a matter of right, to indemnify individuals for the destruction of their property by the enemy, provided such destruc-

tion were in pursuance of the rules of civilized warfare. If that were not the case, then we were not compelled by any principles of public law to make such an indemnity. Every motive of policy would forbid it.

Then, said Mr. B., the question is, was the devastation of the whole Niagara frontier and the burning of Buffalo, acts justified by the laws of war? Can this be a subject of serious doubt at the present day? If we pass this bill, we proclaim that our denunciations of the conduct of the British army on that frontier, which has met the reprobation of the people of the United States, and, he trusted, of the whole civilized world, were unjust and unfounded. The Congress of the United States will declare, that the acts of that army were measures of lawful war, and, as such, they were bound to grant indemnity to the sufferers. This is the principle upon which the bill has been reested by its friends, and the only principle upon which it can rest.

Let us then, said Mr. B., inquire into the justice of this proposition. Had the enemy a right to burn and destroy the whole Niagara frontier, because most of the private houses were occupied as barracks and places of military deposit? On this subject he concurred generally with the views of his friend from Virginia, (Mr. MERRELL.) If this were established as a correct principle of national law, the consequence would be dreadful, and in many cases, the general devastation of the private property of unoffending individuals must inevitably ensue. War would no longer be a civil game between independent sovereigns; but each individual of the hostile nations would be liable to ruin, by the destruction of his property. I will illustrate my views, said Mr. B., by an example. Let an enemy land upon our shores and drive our army beyond the line of our fortifications, what would then be the consequence? Private houses must of necessity be used as places of military deposit, and as a shelter for the soldiers. Once, then, establish the principle embraced by this bill, and you justify an enemy in destroying and laying waste the whole country over which he advances. Nay, you do more; you offer him the strongest temptation to commit such outrages. Such, said Mr. B., has never been the practice of civilized nations; and he trusted this Government would never sanction the propriety of such outrageous acts on the part of an enemy.

Mr. B. said there was another view which this subject presents, which adds the guilt of perfidy to that of the violation of the laws of war. Whilst the village of Buffalo still presented a hostile front to the enemy, a capitulation was entered into by Col. Chapin of our army, with Gen. Rial, who commanded the British forces. By that instrument, it was solemnly agreed "that private property and private persons should not be molested or injured." Upon the faith of this capitulation the British forces entered the town. The testimony proves, that, before its date, they were well acquainted with the fact, that a large body of the United States

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troops had been quartered there, and that many of the houses were places of military deposit. With a full knowledge of those circumstances, they entered into the capitulation: What was then their subsequent conduct? Instead of separating the military stores from the houses in which they were deposited; instead of destroying public and saving private property, they involved the whole village in one common conflagration. At the most inclement season of the year, in a northern climate, regardless of their faith, they set fire to the town, and drove its inhabitants to seek shelter and bread from the compassion of strangers. And this under pretence of what they well knew before the capitulation, that there were military stores deposited in many of the private houses. And yet this destruction is attempted to be justified by the laws of war established among civilized nations.

Again, said Mr. B., pass this bill, and no member of the committee can form any just estimate of the number and amount of the claims to which it will give birth. The inhabitants of the Niagara frontier are neither better nor worse than their fellow-countrymen. This bill is chiefly intended for their benefit. It is to embrace a tract of country of considerable extent, within which the whole mass of people feel a common interest in obtaining from the Government as much as possible. Self-love, and the prejudices which necessarily result from it, will induce them to bring every case in their power within the language of the law, and to place the highest value possible upon the property which was destroyed. This bill is without limit, and without bound; and what will be the extent of the appropriation necessary to carry it into effect, the committee cannot even conjecture.

Sir, said Mr. B., I may be asked if I am unwilling to afford these sufferers any relief? I answer, without hesitation, I am not. They have claims upon our generosity, not upon our justice. I would mitigate their calamities, not indemnify them for their losses. They have suffered more than the common misfortunes of war; they are therefore entitled to the compassion of a paternal Government. I would grant them such relief as, whilst it would not be too burdensome on the Treasury, nor produce those ruinous consequences to the nation which must result from establishing as a principle, that we will pay the value of private property destroyed by the enemy in violation of the laws of war, might yet mitigate their sufferings. I believe I know several gentlemen of the committee to be of the same opinion. I would give them 150,000 or 200,000 dollars, to be distributed pro rata, in full satisfaction of all demands. If, said Mr. B., you adopt a principle of this nature, you will at once know the extent of your donation, and you will make it the interest of the sufferers themselves to watch over the claims of each other, and see that none are established except those which are supported by principles of justice.

Mr. MALLARY, of Vermont, said, that, in giving a vote upon this bill, he should do so with refer-

ence equally to the policy of the Government and the claims of individuals. It was well known, he said, that at the time of the passage of the law of 1816, and the amendatory law of 1817, there had been a serious investigation of the merits of those laws. Ten years have elapsed since the passage of those laws, and Mr. M. asked if it was not almost impossible now to establish a rule, different from that which was established when the subject was fresh in the minds of the members. As a matter of expediency, he thought there would be very great difficulty in ascertaining any other rule by which those claims could be disposed of. The inquiry then was, What has the Government done, and in what condition are the claims of these individuals? Some gentlemen had expressed a wish that these claims should be decided upon the principle of the law of 1816. Mr. M. said he was perfectly willing, for his part, that those claims should be presented, and determined, upon the rule of the act of 1816, that payment should be made for private houses or other buildings occupied by the United States, and destroyed whilst so occupied. This, he said, was a safe rule, founded on the principles of the Government, recognized by the constitution, that when the Government takes the property of an individual for private purposes, it shall, in such case, make compensation for it if lost or destroyed. But, he said, as for compensating the losses of a whole frontier, destroyed by a wanton act of violence by the enemy, under pretence that our armies had marched in that direction, it was opening so wide a drain upon the Treasury as no Government could safely sustain. Were we to sanction such a principle at this time of day, said Mr. M., we should abandon our duty. I would vote any amount of money, said he, which might be necessary to carry into effect the principle of the acts of 1816 and 1817. If there be any individuals on the Niagara frontier whose cases came within the principle of those acts, Mr. M. said, they should cheerfully have his vote, and he presumed they would have the decided and unanimous vote of the House in their favor. The carrying into execution, in favor of claimants, of the principle of the law of 1816, was all that could be expected of Congress, &c.

Mr. TAYLOR, of New York, said he should support the original bill, not because it embraced any new principle, but was to carry into effect one already established, and he should oppose the amendment proposed by the gentleman from Illinois, because to adopt them would be to introduce a principle upon which Congress has not yet legislated. It would be difficult, he said, unless the principle of his colleague was the true one, to find any principle on which the Niagara claims should be paid. The construction which had been given, by some of the committees of this House, to the 9th section of the act of 1816, was, that the proviso to it should be so construed as to defeat the object of that section—an interpretation contrary to every rule of construction. What

case can occur, said he, in which it may not be said, that destruction of property by an enemy was wanton, and could have occurred whether the property had been occupied for the use of the Government or not? The allowance of this objection would destroy, at once, the whole effect of the 9th section of the act of 1816, and it never could have entered into the minds of the framers of that act, that it could be so construed. I was here, said Mr. T., at the passage of the act of 1816, and the object of it, if I understood any thing in regard to it, was to pay for all losses of private property occupied for military purposes, and destroyed according to the rules of civilized warfare. Property so occupied, had become public, and the loss of it ought to fall on the public, to whose use it had been converted.

I rose, said Mr. T., merely to say, that I am in favor of an extension of the principle of the act of 1816, and of giving to the 9th section the only construction which, upon legal principles, it appears to me possible to give to it. We are led astray, in debating this subject, by going into a consideration of *motives* on the part of the enemy. We lose sight of the *facts* of the occupation of the property by the enemy, and we go to the motive of the destruction on the part of the enemy. In doing so, you ask for what you cannot obtain. There may have been a variety of motives, and in that case you must go into a metaphysical inquiry, to ascertain which of them was the predominating motive. This, Mr. T. said, was the cause of the error into which some gentlemen had fallen, which they would have avoided by confining their attention to facts, &c.

On motion of Mr. Ross, of Ohio, the committee then rose, reported progress, and obtained leave to sit again.

TUESDAY, January 4.

Naval School.

The resolution of Mr. LIVINGSTON, proposing a plan for the education of Officers of the Navy, being under consideration, some conversation took place between the mover and Mr. FULLER, who offered an amendment to strike out the whole of the resolution after the word *Resolved*, and to insert a provision instructing the Committee on Naval Affairs to inquire into the propriety of establishing a school for the instruction of Midshipmen, and other warrant officers of the Navy, when not at sea.

Mr. LIVINGSTON objected to the substitute, as not going so far as the system he wished to see adopted. The substitute restricted the instruction to midshipmen, but he wished a preparatory school, which should take up young men before they entered the service. Mr. L. said, it was owing to the want of an establishment of this kind, that the Navy was going down. Yes, sir, said he, the Navy, I repeat it, is going down in point of the attainments of those who are entering it. There is, in this respect, a

marked distinction between those who are entering the two branches of our military service. Those who enter the army are decidedly superior in *previous attainments*. The want of a good system of elementary instruction for the naval service, begins to be felt already. It may be felt when it is too late. The future commanders of our maritime force should be prepared now, while we have opportunity and time for it. But, without a school, this can never be done. The actual service may make seamen, but it alone will never make officers.

Mr. FULLER gave the gentleman from Louisiana much credit for his enlarged and statesman-like views on this subject. He commended his desire to place the education of our naval commanders on a broad and permanent basis; and he knew of no objection, at present, which would prevent his voting for the gentleman's resolution. But he must apprise the gentleman, that, before he was a member of Congress, this same subject had been before them; and the Committee on Naval Affairs had made great efforts for its accomplishment. They had confined even their hopes to the education of warrant officers in service, and had used much exertion to reconcile the minds of gentlemen who were opposed to the measure, but had not been able to do it; and he would leave it to the candor of the gentleman from Louisiana to say, if those who refused to grant even the half of the plan he proposed, were likely to accede to the whole of it. Mr. F. disclaimed being swayed by any feelings of pride, as a member of the Naval Committee, which might be supposed to render him jealous of a similar attempt by the gentleman from Louisiana; his only objection was, the difficulty of finding means. He would, however, withdraw his amendment.

Mr. MERRICK then observed, that, as he heard it whispered by some gentlemen who sat near him, that, under the resolution of the gentleman from Louisiana, there was concealed a system of burdensome expense, of great extent, he thought it his duty to state that he was warranted by the gentleman who presided over the Navy Department, in saying that the object might be accomplished at a very small expense. It had been even proposed to place such an institution, without any further grant from Congress, in the barracks erecting at the fortification at the mouth of the Chesapeake. As the buildings were there already provided, all that would have to be granted, would be an appropriation for the salaries of two or three professors, which was a trifling expense in comparison with the good to be attained. Midshipmen are now taken on board our vessels on trial only—they go one voyage to sea—and if, from that experiment, they appear to discover talents for public usefulness, they receive a warrant, and regularly enter the service—just as young men are received as cadets at West Point. The House was aware that the Government could assemble the Midshipmen at any point it might judge proper and thus afford to the Navy some

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of those benefits which the Army derives from the Academy at West Point.

Mr. KEYNOLDS, of Tennessee, rose, not to oppose the measure proposed by the gentleman from Louisiana, but only to assure that gentleman that this was not the plan which would keep the Navy from "going down." The difficulty lay at a previous point—there was almost no such thing as apprentices in our merchant service. Merchants found the applications so numerous, to take out young lads on trial, and the measure was in general attended with so much trouble and so little profit, that they generally refused to do it. Hence there was no such thing as a proper nursery for our young seamen—and, unless some law was passed compelling ship-owners to take a certain quota of apprentices, in proportion to the tonnage they owned, we should soon have no seamen of our own raising. The proper measure was to go at once to the foundation, and, by some such law as he had suggested, provide an effectual nursery for both services.

The question was then put on Mr. LIVINGSTON'S resolution, and lost—58 members only rising in its favor.

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The House having again resolved itself into a Committee of the Whole on the bill "for the relief of certain persons who suffered by destruction of their property by the enemy, during the late war"—

Mr. ROSS then rose, and observed that it was not his intention to enter into a discussion of the abstract principle of the bill before the committee. If he understood the principle, as well of the bill as of the amendment now proposed, it did not differ materially from that of the bill of 1816, either in form or substance. He did not know that it would be a very profitable inquiry to go into the intentions of Congress in passing that act; but he believed, if such an investigation were made, it would appear that the intent of Congress was to furnish a rule for ascertaining the amount of damage that had been suffered by persons, whose private property had been taken for the use of the United States, and in such circumstances destroyed by the enemy, according to the laws of civilized warfare. The ninth section of that act, so often referred to in this debate, did not introduce into our legislation any new principle, *i. e.* any principle foreign to the acknowledged laws of nations. If he had rightly understood the gentleman from Virginia, (Mr. BARBOUR,) who had favored the House with a learned and lucid argument on the point, he held that when the Government took any private building for a military use, and it was then destroyed by the enemy, with a view to benefit himself and to injure us, it was lawfully destroyed, according to the laws of war among civilized nations. Now, the act of 1816 said none other than this. It went upon this principle as taken for granted, and only directed how the debt, acknowledged to be due from

Government to the sufferers, should be ascertained as to its amount. Mr. R. said he thought that, in the previous part of the debate, gentlemen had departed far from the true subject before the committee, when they went into an inquiry, as though the Congress, in passing that act, had not gone according to the received law of nations, and as though some new rule had been then established. It was not so; and, he asked, if the principle of the act of 1816 was a correct one, how Congress could now withhold an extension of that same principle to all the cases justly included within its range? If the Government, when it came out of the late war, flushed with glorious victory, their hearts exulting, and warm with lively gratitude towards those who had raised their country's name by land and on the ocean, could, without regard to nice lines of demarcation, recognize a great principle owned by all civilized nations, and, in accordance with it, had passed the act of 1816, he thought it did not become Congress, at this day, because they find that, in carrying that law into effect, they may chance to have a large sum of money to pay, to begin to quarrel with the law, or deny the principle on which it is founded. He saw no difference between the principle of the present bill, and that of the act of 1816, except the proviso in the latter, that it shall be proved that the occupation of the buildings by the United States was the cause of their destruction by the enemy. The present bill assumed this from the two facts of the occupation and the destruction. It holds that, being occupied for military purposes, the buildings become the lawful subjects of military destruction. The omission of that proviso was no objection against the present bill.

Mr. FARRELY, of Pennsylvania, rose, and, in an argumentative speech of some length, advocated the bill. Conceiving that the dispute which had taken place, regarded rather the facts of the case than the principle on which the law should be framed, he proposed to inquire whether the property for which indemnification was claimed, was, or was not, a legitimate subject of destruction by the enemy. To determine this point, he argued, it ought to be remembered that the Niagara Frontier was the only point from which the Government proposed to make a descent upon the enemy's territory. It was here that, in 1812, an army had been collected and commanded by a gentleman, now an honorable member of this House, (Gen. SMYTH,) and it was from this frontier, that, in the fall of that year, another honorable member (Gen. VAN RENSSLAER) had made a descent on the Canada lines. These facts were sufficient evidence that this was the place from which we intended our hostile operations to proceed: yet no barracks had been provided; no arsenals were built there; no accommodations were prepared for our troops. He asked whether, under such circumstances, it did not become the duty of a British military commander, if he had any regard for the interest

of his country, and his own military reputation, to destroy the only means of our army. He found that they depended for shelter upon houses and other buildings which were private property. Now, he would further ask, if the United States *had* built barracks and magazines, whether *they* would not have been lawful subjects of destruction? And if private houses were used instead, where was the difference as to the right? The enemy might infer, from what had happened in 1812, that the same thing would happen again in 1818, especially as no barracks had since been built; and, as he knew that it was impossible for troops, in the month of December, to remain in that climate without shelter, it was his duty as a commander to divest them of the only shelter they could obtain, which was in private houses. Gentlemen had said, that it does not appear that the occupation was the motive for destruction; but, Mr. F. said, he would ask, does it appear that such was *not* the motive? We know that, when Buffalo was destroyed, there were 2,500 men quartered there; and the enemy found that, by destroying one village, he could put it out of the power of our Government to maintain a single post—to keep a single soldier on all that line of frontier. Was not this a sufficient motive? Some gentlemen seemed to disbelieve that these buildings were occupied for military purposes at all. But surely all the testimony went that way; and if facts so well substantiated were to be overturned by mere supposition, and by a theoretical view of national law, he knew not what use there was in testimony, or how facts were ever to be ascertained.

Other gentlemen had insisted that the burning of our frontier, being on a principle of retaliation, was contrary to the law of nations, and, therefore, the Government is not bound to pay. But Mr. F. denied the position, and he defied them to show, in any approved writer on international law, such a doctrine as that retaliation was unlawful. The reverse was true. All writers admit that, when retaliation is just, it may be practised as a means to prevent the repetition of injury. Though we admit that the burning of Newark was a barbarous act, yet the retaliation of it was lawful on the part of the enemy—it was only following the example we had set—and we had rendered the act lawful by our own unlawful conduct in the first place. When our Government commenced a system of destruction of property, it must have known that it incurred the risk of retaliation. It must have known that the burning of Newark rendered Buffalo unsafe; and, if Buffalo was afterwards destroyed, the Government had itself to blame for it.

THURSDAY, January 6.

*Accounts and Claims of President Monroe.*

The following Message was received from the PRESIDENT OF THE UNITED STATES, by Mr. Everett:

*To the Senate and House of Representatives of the United States:*

As the term of my service in this high trust will expire at the end of the present session of Congress, I think it proper to invite your attention to an object, very interesting to me, and which, in the movement of our Government, is deemed, on principle, equally interesting to the public. I have been long in the service of my country, and in its most difficult conjunctures, as well abroad as at home, in the course of which I have had a control over the public moneys, to a vast amount. If, in the course of my service, it shall appear, on the most severe scrutiny, which I invite, that the public have sustained any loss by any act of mine, or of others, for which I ought to be held responsible, I am willing to bear it. If, on the other hand, it shall appear, on a view of the law, and of precedents in other cases, that justice has been withheld from me, in any instance, as I have believed it to be in many, and greatly to my injury, it is submitted whether it ought not to be rendered. It is my wish, that all matters of account and claims, between my country and myself, be settled, with that strict regard to justice, which is observed in settlements between individuals in private life. It would be gratifying to me, and it appears to be just, that the subject should be now examined, in both respects, with a view to a decision hereafter. No bill would, it is presumed, be presented for my signature, which would operate either for or against me, and I would certainly sanction none in my favor. While here, I can furnish testimony, applicable to any case, in both views, which a full investigation may require; and the committee to whom the subject may be referred, by reporting facts now, with a view to a decision after my retirement, will allow time for further information, and due consideration, of all matters relating thereto. Settlements with a person in this trust, which could not be made with the accounting officers of the Government, should always be made by Congress, and before the public. The cause of the delay, in presenting these claims, will be explained to the committee to whom the subject may be referred. It will, I presume, be made apparent, that it was inevitable; that, from the peculiar circumstances attending each case, Congress alone could decide on it; and that, from considerations of delicacy, it would have been highly improper for me to have sought it from Congress at an earlier period than that which is now proposed, the expiration of my term in this high trust.

Other considerations appear to me to operate with great force, in favor of the measure which I now propose. A citizen, who has long served his country, in its highest trusts, has a right, if he has served with fidelity, to enjoy undisturbed tranquility and peace, in his retirement. This he cannot expect to do, unless his conduct, in all pecuniary concerns, shall be placed, by severe scrutiny, on a basis not to be shaken. This, therefore, forms a strong motive with me for the inquiry which I now invite. The public may also derive considerable advantage from the precedent, in the future movement of the Government. It being known that such scrutiny was made, in my case, it may form a new and strong barrier against the abuse of the public confidence in future.

JAMES MONROE.

WASHINGTON, 5th January, 1825.

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*Crimes against the United States.*

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The Message was read, and ordered to lie on the table and be printed, Mr. INGHAM for that purpose waiving a motion, which he had made, to refer it to a Select Committee.

FRIDAY, JANUARY 7.

*Crimes against the United States.*

On motion of Mr. WEBSTER, of Mass., the House went into Committee of the Whole, (Mr. CONDIOT in the chair,) on the bill more effectually to provide for the punishment of certain crimes against the United States, and for other purposes.

[The following is an abstract of the provisions of this bill, as originally reported :

The first section provides, That, if any person or persons within any fort, dock-yard, &c., &c., shall, wilfully and maliciously, burn any dwelling house, or mansion house, or any store, barn, or stable, within the curtilage thereof, every person so offending, his or her counsellors, aiders, and abettors, shall be deemed guilty of felony, and shall, on conviction thereof, suffer death.

The second section provides, That, if any person or persons, in any of the places aforesaid, shall, wilfully and maliciously, set fire to, or burn, or otherwise destroy, any beacon, or any other building, than is in the first section of this act mentioned, or any timber, &c., &c., every person so offending, his or her counsellors, aiders, and abettors, shall be deemed guilty of felony, and shall, on conviction thereof, be punished by fine, not exceeding five thousand dollars, and by imprisonment and confinement to hard labor, not exceeding ten years, according to the aggravation of the offence.

The third section provides, That, if any offence shall be committed in any of the places aforesaid, the punishment of which offence is not specially provided for by any law of the United States, such offence shall, upon a conviction in any court of the United States having cognizance thereof, be liable to, and receive the same punishment as the laws of the State in which such fort, dock-yard, navy yard, arsenal, or magazine, or other place, ceded as aforesaid, is situated, provide for the like offence, when committed within the body of any county of such State.

The fourth section provides, That, if any person or persons upon the sea, or in any arm of the sea, or in any river, haven, creek, basin, or bay, within the admiralty and maritime jurisdiction of the United States, shall commit the crime of wilful murder, or rape, every person so offending, his or her counsellors, aiders, or abettors, shall be deemed guilty of felony, and shall, upon conviction thereof, suffer death.

The fifth section provides, That, if any person or persons, upon the sea, or in any other of the places aforesaid, within the admiralty and maritime jurisdiction aforesaid, shall commit theft by force or violence, &c., or run away with vessel, &c., every person so offending, his or her counsellors, aiders, and abettors, shall be deemed guilty of piracy and felony, and shall, on conviction thereof, suffer death.

The sixth section provides, That, if any person or persons upon the sea, &c., with intent to kill, rob, steal, commit a rape, or do or perpetrate any other felony, shall break or enter any ship or vessel, boat, or raft; or if any person or persons shall wilfully and maliciously cut, spoil, or destroy, any cordage

cable, buoys, &c., every person so offending, shall be punishable by fine, not exceeding one thousand dollars, and by imprisonment and confinement to hard labor, not exceeding five years.

The seventh section provides, That, if any person or persons, &c., shall receive stolen money or goods, &c., every person, so offending, shall be punishable by fine, not exceeding one thousand dollars, and imprisonment and confinement to hard labor, not exceeding three years.

The eighth section provides, That, if any person or persons shall plunder, steal, take away, or destroy any money, goods, &c., from any vessel, which shall be in distress, or which shall be wrecked, lost, stranded, or cast away, &c., or wilfully obstruct the escape of any person endeavoring to save his or her life from such ship, or vessel, or the wreck thereof; or, if any person or persons shall put out any false light or lights, with intention to bring any ship or vessel into danger, or distress, or shipwreck; every person, so offending, his or her counsellors, aiders, and abettors, shall be punishable by fine, not exceeding five thousand dollars, and imprisonment and confinement to hard labor, not exceeding ten years.

The ninth section provides, That, if any master or commander of any ship, or vessel, belonging, in whole, or in part, to any citizen or citizens of the United States, shall, during his being abroad, maliciously, and without justifiable cause, force any officer or mariner, of such ship or vessel, on shore, or leave him behind, in any foreign port, &c., he shall be punishable by fine, not exceeding five hundred dollars, or by imprisonment, not exceeding six months.

The tenth section provides, That, if any person or persons, in any case not hereinbefore specially provided for, shall wilfully and maliciously set on fire, or burn, or otherwise destroy, &c., any ship or vessel of war of the United States, whether the same be on float or building, or begun to be built, on any dock-yard of the United States, every person so offending, shall, on conviction thereof, suffer death.

The eleventh section provides, That, if any officer of the United States shall be guilty of extortion, under or by color of his office, he shall be punishable by fine, not exceeding five hundred dollars, or by imprisonment, not exceeding one year.

The twelfth section provides, That, if any person in any case, matter, hearing, or other proceeding, when an oath or affirmation shall be required to be taken or administered under or by any laws of the United States, shall commit perjury, he shall be punishable by fine, not exceeding two thousand dollars, and by imprisonment and confinement to hard labor, not exceeding five years. And if any person shall be convicted of subornation of perjury, he shall be punished by fine, not exceeding two thousand dollars, and by imprisonment and confinement to hard labor, not exceeding five years.

The thirteenth section provides, That, if any person, upon his or her arraignment upon any indictment before any court of the United States for any offence, *not capital*, shall stand mute, or will not answer or plead to such indictment, the court shall, notwithstanding, proceed to the trial of the person so standing mute, &c. And the trial of all offences which shall be committed upon the sea, or elsewhere within the admiralty and maritime jurisdiction of the United States, shall be in the district where the offender is apprehended, or into which he may be first brought.



The fourteenth section provides, That, in every case where any criminal convicted of any offence against the United States, shall be sentenced to imprisonment and confinement to hard labor, it shall be lawful for the court by which the sentence is passed, to order the same to be executed in any state prison or penitentiary, within the district where such court is holden, the use of which prison or penitentiary shall be allowed or granted by the Legislature of such State for such purposes; and the expenses attendant upon the execution of such sentence shall be paid by the United States.

The fifteenth section provides, That the several courts of the United States shall have power and authority, in all cases of conviction before them of any person or persons, for any crime or offence against the United States, in their discretion, to require any person or persons, so convicted, to give security by a recognizance, with surety or sureties to keep the peace, &c.

The sixteenth section provides, That, if any person who shall be employed as a cashier, clerk, or servant, in the Bank of the United States, or any of its offices, shall steal or embezzle the money or other effects of the Bank, &c., he shall be punishable by fine, not exceeding five thousand dollars, and by imprisonment and confinement to hard labor, not exceeding ten years, according to the aggravation of the offence.]

The 4th section (which provides for the punishment of murder, rape, and several other crimes, when committed in any arm of the sea, or in any river, haven, creek, basin, or bay, within the admiralty and maritime jurisdiction of the U. States) being under consideration—

Mr. WICKLIFFE moved, as an amendment, to insert the following words: "and not within the jurisdiction of any State or territorial government." He explained and supported the amendment, as intended to prevent collisions between the authority of the General and State Governments. The admiralty jurisdiction of the United States had been claimed and exercised within the State of Kentucky, and, he believed, from the mouth of the Mississippi to St. Louis. He conceived the State governments to be entirely competent to inquire into and punish crimes committed within their own jurisdictions, and that, as there was no necessity, there would be no advantage, in giving the United States concurrent power to do the same.

Mr. WEBSTER replied. He had already stated to the committee that one of the principal objects in framing this bill, had been, to avoid a conflict of territorial jurisdictions between the United States and the several States. But it was the first time he had heard of such an extraordinary thing, as that maritime jurisdiction had been exercised by the courts of the United States from the State of Kentucky; he did not know that any person had dreamed of the application of such a jurisdiction there; and Mr. W. said, he thought that those who had exercised it must have been dreaming themselves at the time they did so. The class of crimes provided for in this section not only might happen, but had actually occurred, without the existence of any law to punish them. Murders had been committed on

board our own ships while lying in the harbors of foreign nations, and, for want of such a provision, they had gone unpunished. He knew that the State governments were competent to the punishment of crimes committed, under similar circumstances, in any harbor or river of the United States; but they were usually disinclined to do so, considering the crime as more particularly committed against the United States. There might, besides, occur much difficulty, where the boundaries of different counties surrounded the same bay, in deciding within which of them the fact happened. In bays, &c., which, though part of the sea, were not any part "of the high seas," the common law jurisdiction, and the admiralty jurisdiction, were concurrent; and should the section pass, its only effect would be to provide that, if the State did not try the offender, the United States should. As the interest and property more immediately concerned were those of the United States, it was not proper to leave it at the option of any State, whether offences against them should be punished.

Mr. WICKLIFFE replied. He had stated not his opinion, or his apprehensions, but a fact which actually existed. Admiralty jurisdiction had been claimed, and had been exercised within his native State. The jurisdiction had been exercised in Kentucky by a tribunal composed of Judges, who were not in the habit of dreaming on legal subjects, and the question was now pending before the Supreme Court of the United States. The section provides to punish what the States are themselves competent to punish, and in a manner different from that in which some of the States provide to punish it. Admiralty jurisdiction had also been claimed and exercised, Mr. W. said, in the State of Louisiana, and it would be the effect of the section to take the punishment of every boatman who got into a fray, on board one of the flat-bottomed boats on the Mississippi, into the hands of the United States Courts, and punish him in a way at variance with the laws of Louisiana. I (said Mr. W.) would give to the States exclusive jurisdiction within their own territories. Or, if the gentleman intends to punish only crimes committed on board vessels of the United States, and would so modify his amendment as to accomplish that object alone, he would agree to it. But the section, as it stands, said Mr. W., is general and indiscriminate. Mr. W. further objected to it as being without warrant from the constitution. That instrument gives to the General Government no power to prescribe the punishment of crimes, under an admiralty jurisdiction, except such as are committed on the high seas, or are offences against the laws of nations. The crimes here referred to, are not committed on the high seas, nor are they offences against the law of nations.

Mr. WEBSTER inquired, whether he was to understand the gentleman from Kentucky as affirming that the constitution gave to the General Government no other power to punish

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crimes, except that contained in the clause he had just quoted?

In answer to Mr. WEBSTER's question—

Mr. WICKLIFFE said he did not see, in the constitution, any delegated power to define and punish the offences designated in the section under consideration when committed within the territorial limits of a State, nor did he think it resulted as necessary to carry into effect the powers delegated to the General Government.

After some further consideration, the question was put on Mr. WICKLIFFE's amendment, and it was negatived, ayes 46, noes 108.

Mr. ELLIS then moved to amend the section by striking out the words ["or rape."] This crime, he said, was, by the penal codes of most of the States of the Union, punished in a manner different from murder; and however infamous the former crime might be, he thought there ought to be a gradation in its punishment below that of the latter. There had been in many States of the Union an endeavor at the reformation of the criminal code—in several States this had been effected to a considerable extent, and he believed without the least detriment to public morals or to public security. He regretted to perceive that the legislation of the States was crossed in so many instances by the proposed bill, and that the old exploded system of punishments was so far adopted and revived by it. The bill, he had understood, professed to be an amelioration of the existing laws—but, if it created, as has been said by the gentleman from Kentucky, (Mr. WICKLIFFE,) sixteen new capital offences, it was, instead of an amelioration, rather an aggravation of their severity. It was easy for a legislator to say, that those who broke through the salutary restraints which tend to preserve society, are worthy of death—but, where it was found, on experiment, that penalties of a milder form were equally effectual in the prevention or diminution of crimes, it would not do to insist on such doctrine. A milder system had been tried, and no increase of crimes had occurred beyond the proportion in which population had multiplied—and, while that was the case, he should feel bound in duty to oppose the bill in its present form, at least by his vote, and to protest against all needless multiplication of capital punishments.

Mr. GAZLAY supported the amendment of the gentleman from Pennsylvania, chiefly on this ground, that, if "rape" were placed on an equal footing with murder, where the one was committed the other would generally be committed also, to prevent prosecution.

Mr. WEBSTER replied, that the Committee on the Judiciary did not consider themselves as instructed to re-modify the penal policy of the United States. They had no authority to do so. Should the time come when the Government should see fit to abolish capital punishments entirely, it was competent to do so—but the present bill would be found, upon the whole, to be a mitigation of the laws as they previously stood. He did not know that he should object to the

present amendment, inasmuch as it was not probable that the crime referred to would often occur in the circumstances provided for; but, as to the crime itself, he never would consent that it should be punished with any thing less than death. The amendment was lost.

Mr. WEBSTER then moved to insert a section in the bill, which provides, that, if any offence shall be committed on board of any ship or vessel belonging to any citizen of the United States, while lying in a port or place within the jurisdiction of any foreign state or sovereign, it shall be cognizable by the United States Court in the same manner as if committed on the high seas; with a proviso that, if tried abroad, the offender shall not again be tried at home.

To this, Mr. FORSYTH objected, as unnecessary, and somewhat dangerous; unnecessary, because the crimes were punishable by foreign Governments; dangerous, because it contained no safeguard against a citizen who had been tried and acquitted by our own courts being afterwards tried and condemned by a foreign jurisdiction.

Mr. A. STEVENSON, of Virginia, objected to the amendment on constitutional grounds. He denied the power of this Government to carry its territorial jurisdiction within the jurisdiction of another sovereign. The received doctrine of the law of nations was, that the jurisdiction of any sovereignty was commensurate with the boundaries of the country in which it existed, except when, by a fiction, it was supposed to accompany its ambassadors when abroad, its armies when on a march, and its ships of war; but this section applied to private as well as public ships, and he denied that a private vessel could carry the United States jurisdiction with her wherever she went.

Mr. WEBSTER explained, and again referred to cases where crimes had been committed on board our own vessels, but had gone without punishment, because the vessel was within a foreign jurisdiction. It was a case that might happen every day. Our commerce had spread over all seas; it extended into all the bays and ascended all the rivers of the world. But, as the law now stood, the moment a vessel left the high seas and entered into any creek, haven, or bay, the persons on board were left without law; the crew might rise and murder the master, or commit any other outrage, and there was no law whatever to punish them. As much as two hundred years ago, the necessity of some such provision as that now proposed, had been seen by the Government of England, and, in the reign of Henry 8th, a statute was enacted to punish at home crimes committed on board English ships in foreign harbors. Numerous convictions had taken place under that statute, one of the most celebrated of which was the case of Governor Wall, who was tried and hanged in England for a murder he committed at Goree.

It is objected, said he, that we shall usurp jurisdiction where it does not belong to us—but the object of this section is to protect our

own property, and punish offences committed against this Government by its own citizens. Suppose an act of treason against the United States were planned or committed without the limits of our own territory, would the United States have no power to punish it? The power to enact the provisions of this section rests on the power granted by the constitution to protect commerce—it rests on the same ground as the laws punishing certain crimes against the Post-Office; many of which are punished by death. Either the entire class of crimes he had mentioned are absolutely dispensable, or they must be punished by the laws of the United States. As to the danger of a second trial abroad, after the accused has once been tried at home, he thought it to be very small—it was possible—the man *might* go back to the place where he had committed the offence, and he *might* be apprehended and tried by a foreign tribunal—but there is generally little inclination to meddle in such matters, the foreign Government usually considering it as being not their affair. But, if the House saw any danger in the provision, they would, of course, refuse to adopt it.

Mr. FORSYTH insisted on his objections to this provision, and suggested that a provision might be made to try the offender if the foreign Government shall *refuse* to do it—and to prescribe a course of proceeding where no Government existed, as on the coast of Africa, the Marquesas, &c.

Mr. WEBSTER suggested much inconvenience in applying to know whether the foreign Government did refuse. The seat of government might be 500 or 5,000 miles from where the ship lay—and before application could be made, and an answer obtained, she might be detained there for years, &c.

Mr. LIVINGSTON had no doubt of the power of the Government over its own citizens, in all parts of the world, but he objected to the section, because it made no distinction respecting by whom or upon whom the crimes enumerated, were committed. A theft might, for example, be committed in the midst of the harbor of Liverpool, by some one of the inhabitants, on board an American ship, and, according to the section, the thief must be brought off to the United States to be tried and punished. Its provisions, too, embraced every offence, without distinction—crimes against the local police, &c., which the United States might find great difficulty in deciding upon. He feared some difficulty might arise with foreign Governments, under the operation of such a provision. For, if the United States courts have power to punish, they have also power to bring the offender before them, and a man who stole a trifling article, must be brought off from London or Paris to be tried in this country.

Mr. WEBSTER then proposed to restrict the section to murder and manslaughter, and to confine it to offences committed "by or upon any person belonging to the ship's crew, or

any passenger on board the vessel." After considerable discussion, the latter alteration was agreed to, but the words "murder and manslaughter" were stricken out, and the words "any offence" were restored.

The 6th section provides to punish running away with the ship or her cargo, by death.

Mr. WEBSTER expressed a willingness to change this punishment, (hitherto always assigned by law to this offence,) for fine and imprisonment, if the committee should judge the latter penalty sufficient.

Mr. BUCHANAN, of Pennsylvania, said he highly approved of the general features of this bill. It was a disgrace to our system of laws, that no provision had ever been made for the punishment of the crimes which it embraced, when committed in places within the exclusive jurisdiction of the United States. He thought, however, that the penalty of death was too severe to be annexed to the description of crimes contained in the section under consideration.

The power of punishment vested in Government, said Mr. B., results from the right of self-defence. Vengeance belongs not to man. We should, therefore, be careful not to inflict punishments of a nature more severe than the safety of society requires. In all cases where the character of the crime does not involve such a degree of moral depravity in the criminal as to preclude a reasonable hope of his reformation, it would be both unjust and cruel in the extreme, to deprive him of life. These principles need not be either illustrated or enforced before this committee.

What, then, said Mr. B., is the nature of the crimes embraced by this section? One clause of it declares that the passenger on board of any vessel who steals and carries away from it goods of the value of 1,000 dollars, shall suffer death. Is not this punishment out of all proportion with the crime? Is it necessary for the safety of society that death should be the penalty in such a case? Is it possible that a provision of this nature can, in the present improved state of society, be incorporated in our penal code? He believed not. The other crimes enumerated in the section, although more aggravated than the one just mentioned, are chiefly offences against the right of property; and a distinction has generally been made between such crimes and those which are *malum in se*, or highly criminal by the laws of nature.

What, said Mr. B., is the consequence of annexing cruel punishment to crimes? The people of the United States are humane and compassionate, and when the feelings of society are in opposition to the laws, you cannot carry them into execution. The humanity of juries is interposed between the criminal and punishment. The highest crimes thus often pass unpunished; and the chance of escape is in proportion to the enormity of the offence. Even after conviction and judgment, we know by

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experience how difficult it is to get the sentence of the law executed. It is the interest of society, therefore, that, in the degree of punishment, justice should be tempered with mercy.

Mr. B. observed, he had been a member of the committee which reported the bill. He might have moved this amendment in the committee, but had neglected to do so. He trusted that the honorable chairman, (Mr. WEBSTER,) to whom we were so much indebted for the bill, would not object to it.

Mr. B. then moved to strike out, at the end of the section now under consideration, the words—"be deemed guilty of piracy and felony, and shall, on conviction thereof, suffer death;" and insert, in lieu thereof, the words, "be punishable by fine not exceeding \$5,000, and by imprisonment not exceeding ten years."

The question on this motion being taken, without debate, was decided in the affirmative.

Before the committee proceeded to the next section of the bill, Mr. P. P. BARBOUR expressed a desire for further time to reflect upon its various and important provisions, and, with the view to obtain it, moved that the committee rise, which motion prevailed. The committee rose accordingly, and obtained leave to sit again.

MONDAY, JANUARY 10.

*Territorial Judges.*

Mr. TAYLOR, of New York, offered the following resolution:

"Resolved, That the Committee on the Judiciary be instructed to examine and report to this House, whether any, and if any, what, further legislative provision is necessary for the impartial administration of justice in the territorial governments of the United States."

In offering this resolution, Mr. T. said, it had become his duty to call the attention of the House to this subject, in consequence of certain communications he had received from one of the territories, requiring, in his judgment, the attention of Congress. In most of the territories, inferior courts of law have been established by their local legislatures. The judges of these courts are appointed for a limited period, *unless sooner removed by the Executive authority.* In the absence of the governor, the secretary of the territory exercises all the powers and prerogatives of that officer. Generally, he is a member of the bar and a practitioner in the territorial courts. The governors are frequently absent from their territories many months in succession. In such case, it has happened, and, unless prohibited by law, may again happen, that one of the attorneys on record, in a cause depending in court, appoints the judges to try the cause, holds over them the power of removal at pleasure, and exerts a controlling influence in fixing their compensations. The danger of this power, so unfriendly to the impartial administration of jus-

tice, becomes more apparent when we consider the influence the acting governor is capable of exerting over the jurors. Those, being freeholders, generally compose the class of citizens which furnish most of the candidates for the offices of sheriff, justice, coroner, and for office in the militia. In addition, then, to his influence with the court, arising from the facts above mentioned, it has often happened that a portion of the jurors impanelled and sworn to try the cause, have stood in relation to one of the attorneys in the attitude of humble suppliants for office.

These statements, said Mr. T., are not made in reference to any particular case of injustice which may have arisen; but the facts upon which they are founded are derived from very respectable authority, and are entitled to consideration.

The remoteness of the territories from the seat of the General Government, the imperfect responsibility of officers there to the people, the difficulty of detecting and punishing abuses which may exist, unite in demanding of Congress the removal, so far as may be practicable, of all temptation to injustice or oppression. The particular danger to which he had alluded, Mr. T. said, might be remedied by a law prohibiting the person exercising the office of governor from practising as attorney, counsellor, or solicitor, in the courts of the territory over which he may preside.

This prohibition, it was believed, would furnish ground for no such complaint on the part of the officer whom it might affect. The secretary of a territory enjoys a salary from the United States of \$1,000 a year. Our district judges, with salaries, many of which are not greater, and for considerations certainly not more important to the public, have been prohibited engaging, before other and independent judges, in the practice of law. At any rate, said Mr. T., the subject is worthy the attention of the appropriate committee.

The resolution was agreed to.

*Penal Laws of the United States.*

The House then, on motion of Mr. WEBSTER, went into Committee of the Whole, (Mr. COMPTON in the chair,) on the bill further to provide for the punishment of crimes against the United States.

Mr. P. P. BARBOUR rose for the purpose of suggesting to the honorable chairman of the Committee on the Judiciary, the propriety of a modification of the bill now before the committee—a modification which had respect to the principle of the bill, and which, if adopted, would run through several of its parts. He highly approved of much that the bill contained, and thought that many of the offences it contemplated were worthy of punishment; but the object he wished to attain, in the modification he now suggested was, that the federal courts shall have cognizance of all cases where punishment was necessary, and where the

State courts have no jurisdiction; but that, where the State courts have jurisdiction, there none should be given to the United States. He was fully aware that the subject was one attended with much and great difficulty. If we look at the legislative department of the Government, we find that the constitution gives it power to define and punish piracies and felonies, committed on the high seas, and offences against the laws of nations: if we look to the judicial department, we find the constitution giving it jurisdiction over all cases of admiralty and maritime jurisdiction. Confining our attention only to the legislative power of the Government, it would seem to be at once limited to "the high seas;" but, if we go on to the judicial, we find it under the words "admiralty and maritime jurisdiction;" terms, the precise import of which there is much difficulty in settling. The question arises, how far does this admiralty jurisdiction extend? The difficulty of marking this line with precision, none knew better than the gentleman from Massachusetts himself, who took a very distinguished part in a celebrated case lately argued before the Supreme Court of the United States, and which turned mainly on that question. In another case, where the same question came up, Judge Story devoted seventy-five pages to the discussion of it. It is the opinion of some, and this distinguished jurist is one of the number, that maritime jurisdiction extends over "the high seas," and over the sea as it extends into bays, harbors, rivers, and creeks, and as far as it ebbs and flows. Others say that the common law jurisdiction extends only to the enclosed parts of the sea. If the first of these opinions is the correct one, then, according to the provisions of the present bill, the jurisdiction of the federal courts will spread over all the bays, harbors, and rivers of the Union, as far as the tide flows. Mr. B. observed that he should not himself undertake to define the precise extent of this so often discussed jurisdiction; but, as the point had been a matter of controversy long before the date of our constitution, it might be argued, with some plausibility, that the clause in the constitution which speaks of piracies and felonies "on the high seas," had been intended to settle the question. It was a controversy which had called forth a vast amount of talent and intelligence; but without pretending to settle it, he conceived that every necessary purpose would be subserved, if the bill shall make provision for the punishment of crimes committed without and beyond the jurisdiction of the several States. Now, it was the received doctrine, that every State has jurisdiction as far as its own territorial limits extend; and these limits clearly include all the bays, waters, creeks, &c., which are within the State. The gentleman must well recollect the case where this was settled before the Supreme Court in relation to the State of Massachusetts. His wish was to avoid all colliding jurisdictions; and, therefore, it was, that he wished

the bill modified in the manner he had stated. And he now suggested, with that view, that the bill should be made to read as applying to offences committed "on the high seas, and beyond the territorial jurisdiction of any of the States;" or any other phraseology which would attain the same object. He believed the language in the former law was "out of the jurisdiction of any particular State." He trusted that the honorable member from Massachusetts would not object to such a modification.

Mr. WEBSTER rose in reply: he said that the member from Virginia had stated with great fairness the difficulty which attended this subject; and if he apprehended, with that honorable member, that any disagreeable collision could take place between the Federal and State authorities from the passage of the bill as it stands, he might be, perhaps, induced to modify it as proposed. He was well aware that the leading law heretofore existing on this subject, provided for the punishment of crimes committed "on the high seas, or in any bay, harbor, basin, creek, or river, out of the jurisdiction of any particular State;" but he had expressly stated, when he introduced the present bill, that its object was to carry that act further, and he would now assign some of the reasons which led him to desire it. The power to punish was one for which no Government nowadays was much disposed to contend; and the offences committed within the federal jurisdiction were, in most cases, directed against the United States, or against those interests which the Government was especially bound to protect. The jurisdiction of the United States was found chiefly where commerce existed, and commerce was an interest which the United States were peculiarly bound to protect—it is an interest regulated by the United States—its revenue is given to the United States; and the bill proposes to give the federal courts jurisdiction over crimes only where they now have jurisdiction over commerce. The crimes most mischievous were crimes against the property of the Government. Now the question was, whether the General Government shall devolve the whole burden (for it was a burden and not a privilege) of punishing crimes against itself, on the State governments, because committed within their bounds. In taking this task into their own hands, the Government will only be acting on the principle which has governed it from its origin—offences against those rights which are peculiarly committed to its protection it has always punished in its own courts, such as counterfeiting the national coin, forging the national securities, &c. There was nothing to prevent the State governments from punishing these offences as well as others within their limits; yet the Federal Government has never left it to them. The great objection against leaving the task of punishing to the State governments is the burden of expense: no State government, so far as his knowledge extended, was ever very anxious to take this burden—

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none were very ambitious of extending their jurisdiction in this respect. He would now state, so far as his understanding of it went, how the power of punishing these crimes came to the General Government. In defining the power of Congress, the constitution says, it shall extend to the defining and punishing of piracies and felonies upon the high seas, and offences against the law of nations. Whether the constitution uses the term "high seas," in its strictly technical sense, or in a sense more enlarged, is not material. The constitution throughout, in distributing legislative power, has reference to its judicial exercise, and so, in distributing judicial power, has respect to the legislative. Congress may provide by law for the punishment; but it cannot punish. Now it says that the judicial power shall extend to all cases of maritime jurisdiction; and it has lately been argued that, as soon as a judicial system is organized, it had maritime jurisdiction at once, by the constitution, without any law to that effect—but I do not agree to this doctrine—and I am very sure that such has not been the practice of our Government from its origin in 1789 till now. The constitution defines what shall be the objects of judicial power, and it establishes only a Supreme Court—but in the subordinate courts, the jurisdiction they shall exercise must be defined by Congress; the defining of it is essential to the creation of those courts. The judicial power is indeed *granted* by the constitution, but it is not, and cannot be *exercised* till Congress establishes the courts by which it is to be so exercised. And I hold there is still a residuum of judicial power, which has been granted by the constitution, and is not yet exercised, viz: for the punishment of crimes committed within the admiralty jurisdiction of the United States courts, and yet not without the jurisdiction of the particular States. So the constitution says that the federal courts shall have jurisdiction of all civil cases between citizens of different States, and yet the law restricts this jurisdiction in many respects—as to the amount sued for, &c. There is a mass of power intrusted to Congress; but Congress has not granted it all to specific courts, and therefore the courts do not exercise it. The constitution gives to Congress legislative power in all cases of admiralty jurisdiction, from whence has occurred one of the most extraordinary of all circumstances, that causes of revenue have become cases of admiralty jurisdiction. The cause of this seems to be, that, under the colonies, these causes were tried by a judge of the Crown; in England they are not held to be cases of admiralty jurisdiction; but are tried by juries in the court of exchequer. The act of 1790 gives to the District Court of the United States original cognizance of all cases of admiralty jurisdiction, including cases of seizure; hence that very state of things has happened, against which, when we were colonies, we were petitioning the mother country for a hundred years, (which seems to show

that the real grievance was not the trial of those causes without a jury, but by a judge appointed abroad and without our consent.) Mr. W. said that, notwithstanding the objection urged against the bill, it would be found that the law now existing has provided for the jurisdiction the bill proposes—that is, for the punishment of crimes committed within the maritime jurisdiction of the United States, and at the same time within the jurisdiction of the States. The act of 1790, if it had stopped at the words "high seas," would, indeed, have excluded such a jurisdiction as that now proposed—but it does not stop there: it says, also, "and in all bays, harbors, creeks," &c. Many things are directed to be punished in the act of 1790, on the high seas, which are neither piracies nor felonies, although the constitution, speaking of the judicial power, restricts it to piracies and felonies, which would infer that the constitution was then held to grant larger power by the other clause. Several other laws, besides that of 1790, give express authority for the extent of jurisdiction in this bill. Mr. W. here adverted to the act of May, 1820, in which it is decided that admiralty jurisdiction extends as far as the tide ebbs and flows. Mr. W. concluded his remarks, (of which our reporter professes to have given but an imperfect outline, in which he does not expect to have attained the complete accuracy desirable in a view of legal discussions,) by remarking that, if he perceived any danger of the collision which some gentlemen seemed to apprehend, he should be the last to urge any bill that would produce it. We might, indeed, get along without the measure now proposed—we might continue to limp and halt as we have hitherto limped and halted—many murders would go unpunished, and much United States property would be left without any protection from the United States. If we went into any harbor of the country, we should see less of the State authority than was proposed to be left untouched by this bill. The commerce there is all regulated by United States laws—the masters, the mariners, the pilots, are all under regulations of the United States—and he thought that the crimes committed there would also be most properly punished by the United States, if its jurisdiction may lawfully be extended to them.

WEDNESDAY, January 12.

*Western National Road.*

Mr. BRECHER moved that the House go into Committee of the Whole on the bill for the continuation of the Cumberland Road. The motion prevailed—ayes 57, noes 55.

The House went into committee accordingly, Mr. STEELING in the chair, on the bill; which was read. When

Mr. BRECHER, of Ohio, rose, and observed, that the subject to which he was now about to call the attention of the House, was one which had been before Congress, in one form or other,

for nearly a quarter of a century. The object of the present bill was merely the continuation of a great national road, long since planned, and in part executed. It was an undertaking that did honor to this nation, which, even in its incipient stage, had already been productive of great utility; but which, when completed, would be of the highest importance to the public welfare. He would not devote any time to a discussion of the constitutionality of the object proposed. The power of Congress to appropriate money for purposes of internal improvement had lately undergone a very full discussion on this floor, and it would be only a waste of time to travel again over the arguments which had been adduced. He took it for granted that the question was now at rest. He conceived that the sense of the nation was by this time well understood as being in favor of a system of internal improvement, to be conducted on enlarged principles, and with a view to the good of the whole Union. The wisdom of such a system was acknowledged by many who were opposed to commencing it in any particular part of the country, but who thought that there must first be a general survey of the whole ground, and then that the various parts of the plan should be begun in different parts of the Union at the same time. He was of opinion that such a scheme was altogether impracticable, and that it was impossible that every object should be delayed till all of them could go on together. Was there any necessity of this mutual suspicion? Could the members of this confederacy, and of this House, think so injuriously of each other as to suppose that they would abandon the system as soon as each district of the country had secured its own object? For himself, he should blush at such an idea. He knew of no valid objection to making a beginning of the system now. The object he advocated was not the thought of a moment. As early as the year 1800, Congress had set about the design of consolidating, by the means of mutual and easy intercourse, the interests of the South and the West with those of the Eastern parts of our Union. The design had met with much opposition; but the good sense of the House had seen the propriety of the measure—it had met the exigency; and, triumphing over prejudice, had accomplished the beginning of an object which, if pursued and carried out, would lead to results of the most important and valuable nature. This was not to be viewed as a merely Western object. Thus far, it had been of more benefit to the East than to the West. It must be viewed, so far, as an Eastern expenditure. Although the funds out of which it had been made were collected in part from the scattered and scanty pecuniary resources of the Western States, who, feeling an interest in the success of a great national object, had willingly contributed to aid it, yet it had been to them an Eastern object. The people who first settled in Ohio had to make great sacrifices to do this; but they had cheerfully put their hands

into their pockets—and they had done so on great national principles.

It had been said by some, that what they contributed was not a gift. True, it was not. Neither was the road a gift on the part of the United States. The consideration on the part of the State was the exoneration of the public lands within it from taxes for a time; but the amount thus remitted was not equal to what the State had paid out. They had been told that a great amount of school lands had been given by the General Government to the Western States. He denied the position: not a foot of school land had ever been given to the State of Ohio; they had all been purchased. He granted that the reservation of the lots for education out of the public lands, originated in a benevolent principle on the part of the General Government. But, it was also true, that that reservation had been a benefit to the Government. The object of it was to aid the sale of the public lands, by holding out to settlers the benefits of a provision for the education of their children. The buyer looked at this provision, and considered it as a part of what he was purchasing when he paid for his land. This gave value to the public land, and brought money into the Treasury of the General Government. These school lands were, therefore, not to be considered as a *gift*. The reservation, no doubt, operated as a great benefit to the West. Yet the benefit was strictly mutual. There were, indeed, some cases where land had been granted to endow colleges, and the like, which had more the appearance of a gift; but still it was done on the same principle. This intention was made known, when the lands were set up for sale, and it helped to raise their price, and led to a more rapid improvement of the public property. Mr. B. said he had made these observations because it had been said, not only out of doors, but on the floor of this House, and at the last session of Congress, that the General Government had done every thing for the Western States; that it had been most liberal towards them; nay, that it had *civilised* them—and, therefore, the West must not even ask for any thing more. He did not ask the road in this bill as a donation to the Western States—but he asked it as a great national object, and on principles of national policy. In the first place, it would prove a connecting link between the country on the Mississippi and the Atlantic seaboard. Its importance on this ground had been too often discussed, and too long and universally admitted, to be disputed now. In the next place, he would consider it in relation to an objection which had been urged in the debate on internal improvements, viz: that that system would give general offence by leading to an unequal distribution of the public moneys; that revenue would be collected at one extremity of the Union, and expended at another. It was true that every Government ought to be just as well as liberal, and dispense its benefits with an equal hand. But how does the principle apply

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to the actual state of things? What has already been done in the expenditure of the public funds? Fifteen millions of dollars were expended annually, and what proportion of it went west of the Alleghany Mountain? Go into the States of Kentucky, Ohio, Indiana, and Illinois, and see what proportion of what those States paid into the Treasury, was expended within their own bounds. He would not enumerate the expenditures of the Government—all must know that almost the whole of them were on this side of the mountains—though the population was not as one to fifteen. The whole of the public money expended in Kentucky would not amount to what the mere collection cost on the east of the Alleghany. Many of the objects of the expenditure had no existence to the West. Your forts, your light-houses, your navy, the whole civil list, with the exception of one or two judges, and the Representatives in Congress, existed to the East, and there went the greater part of all that was expended for the army. What equality was here? It could not be maintained for a moment. But now a great national work was proposed, which, so far as it went, was calculated to make the balance less unequal, and as such it was deserving of the favorable regard of this House. The mere expenditure of the money which this road would cost, would itself be a great benefit to Ohio, and he hoped it was not unjust that they should have a share of the public expenditure, as well as others. The entire sum would not be equal to what was now expended in some small ports on the Atlantic coast. The building of a single frigate would cost as much as the whole road now asked for. He did not wish to be understood as complaining of the expenditures to the East; he had himself always been in favor of authorizing whatever was needed for the national welfare—he had supported the appropriation for the Navy, as well as those for fortifications—so have the Western members in general, although they might, in some sense, be said to be uninterested in those expenditures. They viewed them as tending to the common benefit of the nation, and they had cheerfully supported them.

Mr. COOK, of Illinois, then rose, and observed, that he should not say any thing in addition to what had fallen from the gentleman from Ohio, (Mr. BEECHER,) respecting the national expenditure east of the mountains. Independent of that consideration entirely, the Western States had a claim upon the General Government, for the road now proposed, and not only for so much of it as was now proposed, but for its continuation quite to the Mississippi. But, as the Representative of the State of Illinois, Mr. C. said he could not consent that so much of the two per cent. on the sale of public lands, as was set apart for the benefit of that State, should go to be expended at so great a distance from it. He would not, indeed, adopt the principles and spirit of Shylock, in pressing the bond of the General Government to the State he represented, but as its Representative, he could

never give his vote to take a fund pledged for her benefit, and lay it out on so distant an object as a road of eighty miles from Wheeling to Zanesville, in the State of Ohio. He would not take what the munificence of the General Government (for he would call it by that name) had set apart to make a road to Indiana, Illinois, and Missouri, to be spent on a road, which did not approach either of them; nor would he consent that money, granted for the road now proposed, should be charged on that fund. Indiana had surrendered her rights as a sovereign State, (the right to tax lands for five years after sale,) on condition that Congress would apply two per cent. on the sale of public lands to the construction of roads leading to the State. For his own part, he was not so sanguine as to the prospect of seeing a great national turnpike completed, as the gentleman from Ohio seemed to be. He did not expect that that object would be accomplished in his lifetime, should he reach the ordinary age of man. Nor was he willing to postpone the road to his own State till that national object was accomplished, and the present generation had passed away; and he had long since made up his mind not to vote for the appropriation of any more money which was to be charged on the two per cent. fund, unless it went to carry the road entirely through. Congress had appropriated two per cent. to the making of a road leading to Illinois. The gentleman from Ohio proposes to pledge it for a road three hundred miles short of the bounds of Illinois. I will not consent to this. If I did, I should be censured, and justly, by those who sent me here as the guardian of their interests. The Legislatures of Ohio, Indiana, Illinois, and Missouri, had each passed resolutions, calling on Congress for an appropriation to this object—it was an object of deep interest to all those States, and he should be departing from the instructions of his constituents, if he gave his vote for a road in Ohio only.

Mr. BEECHER rose in reply—he declared himself to be disappointed, both in the quarter from which opposition had arisen, and in the principle on which it was founded. He thought he had stated, when first up, with sufficient distinctness, that the appropriation for this part of the road was a matter entirely distinct from the two per cent. reserved from the proceeds of the public lands. The gentleman from Illinois cannot but know that that is already pledged, and already expended; it had been laid out on a road "toward" the State of Illinois, which was the very language of the very act pledging it. He would not, however, cavil about this little two per cent. fund—he wished to place the present measure on a broad national basis—on the general principle of internal improvement.

He was surprised to find that gentleman limiting his views as he had done, and narrowing himself into a mere agent for the State of Illinois. If every gentleman on this floor is to act on such a principle, this House will be converted into a body of disorganizers, and its acts



must tend, not to union and national strength, but to separation and national weakness—it was by adopting larger and more noble principles that this nation was to grow and flourish. The gentleman insists on a road that shall reach Illinois—but how will he get it there? on the mere two per cent. fund? That whole fund was not sufficient to make the road through one county in Indiana—it would not even *mark* the road through that State—if this road is to be gone on with at all, it is to be done on the funds of the nation, and not on a pittance of a two per cent. fund. The gentleman wants to lay out a grand national road 500 miles long, on a fund that will never raise one million of dollars; no, not more than \$700,000. But \$1,600,000 has already been expended, on this same fund, whether properly or not, is not the question. No, sir, said Mr. B., I ask gentlemen, and I ask that gentleman, to meet me on principles upon which alone either he or I can be benefited in this matter—on grand principles of general national advantage—principles which animated and gave success to those who first broached this measure—principles on which had been based the acts of 1803, of 1806, of 1812—and on which all that had been done to this day had been avowedly founded. For himself, he had candidly placed the object before the House in its true light—as requiring a distinct appropriation for which there was to be no return from the two per cent. fund, or any other. The nation is about to make a road; and if the nation shall say it is best to begin it at the Mississippi River, I will give that gentleman my hand to support the measure; but I presume it will be the opinion of the nation, nay, I do not doubt the gentleman himself will allow that it is better to begin where the road has now been discontinued.

Mr. JENNINGS, of Indiana, observed that he regretted being obliged to oppose the bill; but he believed that the history of the measure, in its earlier stages, was not generally known or understood. In the original compact between the State of Ohio and the United States, two per cent. out of five per cent. of the proceeds of the public lands was reserved for the purpose of making a road from the navigable waters of the Atlantic to the navigable waters of the Ohio, and thence through the State of Ohio. The compact did not prescribe what kind of a road it should be, nor with what views it should be constructed, whether with a national view or not. Congress, in fulfilment of this contract, had thought proper to make such a road as was not to be found elsewhere in the United States; and they continued to carry it forward without considering what the fund pledged was likely to yield, till it came west of the Alleghany Mountains. They then found that the whole proceeds of the fund had been swallowed up, and more. Then an appropriation was asked to complete the road on the same scale; some difficulties arose; and, in 1819, the appropriation was made, with a pro-

viso, the effect of which was completely to violate a contract with the State of Indiana. [Here Mr. J. quoted the act of 1819.] The compact with Indiana was not similar in its terms to that with Ohio—it prescribed a specific location for the road—but the appropriation could not be obtained on any other condition. Two years since a bill was introduced into the House to repair the Cumberland road—and he had offered an amendment to it, with the express view of removing the restriction imposed on the fund by the act of 1819; which, however, he was induced, by the solicitations of his friends, to withdraw—he had always thought, however, that the Government kept bad faith with the State of Indiana. He had a reason and an object in wishing that the road may be located, and opened afterward. The whole of the fund pledged has been expended, and the road for which it was first pledged is not even located. The State of Indiana has no authority to locate it. That can be done only by the General Government. So that all is kept in a state of suspense, and nothing can be done for want of a location. But, if this were once effected; if an appropriation were granted, first to locate the whole of the road, I would then be willing to give the gentleman enough to carry the road in a complete state to Zanesville.

Mr. McCOR vindicated the Government from the charge of a violation of good faith. The fund had been pledged to make a road *toward* Ohio, not from Boston, but from this city. The Congress had done it not through any oversight, but deliberately and advisedly. Some difficulty was experienced in getting the money—none whatever in getting the pledge. The road does lead toward Ohio. He concluded his remarks, (which being delivered in a very low tone of voice, were imperfectly heard by the reporter,) with expressing a hope that the amendment proposed by the gentleman from Illinois would not prevail.

Mr. TRIMBLE said he had risen, not with any intention of detaining the House, but for the purpose of showing that the gentleman from Illinois had entirely mistaken the compact respecting the two per cent. If there was any one point in his whole argument which went on an entire misapprehension of fact, it was his view of this subject. When the original bond, as the gentleman from Illinois had called it, was entered into between the United States and Virginia, territory now occupied by four States was but a wilderness. It was yet under territorial Government when the act of Congress passed allowing the eastern *division* to form a State Government; and by the compact between that State and the United States, a reservation of two per cent. was agreed to on both sides, to be used in making roads from the navigable waters of the Atlantic to the State, (*Ohio*), and through the same. Now, suppose those States were a territory still, how would you begin the road agreed upon? You would

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begin, first, a road *to* it, and then you would carry the road *through* it; but the dividing of the territory into States had not changed the stipulation. And now, to examine the subject in relation to the gentleman's own State. He insists upon a literal fulfilment of the contract, and charges the General Government with having violated it by applying the two per cent. reserved to the expense of the Cumberland road. But what does the contract say? It says the reserve shall go to make a road *to* the State; and the gentleman is pleading that the road must be *through* the State. It is himself that is violating the letter of the compact. (Nor does this argument, for a liberal construction, come with a very good grace from the gentleman, who himself but lately proposed that the road should be, in part, exchanged for a canal.) But the gentleman must remember that there are two parties—the United States on the one side, and his State on the other. Now the question recurs, where must the road, according to the compact, be commenced? Shall you begin it at the Mississippi? This would be to begin by making the road *through* Illinois, whereas the contract stipulates that the road shall first be made *to* that State, and the two per cent. is so pledged. The construction of the gentleman is against both the letter and the spirit of the compact. Congress is at perfect liberty to pledge the two per cent. if they so please. For himself, Mr. T. said he felt very indifferent whether the pledge was given or not. But now, to come to the good sense of the matter, we have made the road, said Mr. T., as far as Wheeling; this is a road *to* the territory; we are now to make a road *through* it. Where shall we begin? At the point where the part already finished terminates? Or shall we go on with the whole at once? Good sense, he thought, would decide that the beginning should be made at Wheeling. There was the great thoroughfare to the West; the country was thickly settled and peopled; and the road would at once produce the greatest benefits. Shall we leave this and go to the sparsely peopled regions of Illinois? He did not, however, intend to enter further into the subject, having risen merely for the purpose of answering the argument of the gentleman from Illinois.

Mr. BRECHER here rose to say, that, if the gentleman from Illinois (Mr. Cook) would withdraw the amendment he had offered, he would meet his views by striking out that clause of the bill which goes to pledge the two per cent. fund.

Mr. Cook signified his intention to do so, when he should have first replied to the gentleman from Kentucky, (Mr. TRIMBLE.) The gentleman, said Mr. C., has presented certain supposed views of mine about the school fund in Illinois being diverted to canalising purposes, and represents me as being willing in that affair, to violate the compact of Illinois with the United States, although I contend, on this

occasion, for its literal interpretation and fulfilment. Sir, this is so glaring an attack upon my understanding and consistency, that I cannot let it pass without reply. The gentleman has entirely misstated my proposition in relation to the school fund. I proposed merely to apply the school fund to the construction of a canal, and reimburse it out of the tolls, but I did not propose even this arrangement of mere convenience to be carried into effect without the consent of the State legislature first asked and obtained. I did not, therefore, contemplate the slightest violation of the compact.

He sets out in his argument with a fact of which I never had the good luck even to hear till he spoke of it, viz: an agreement of Virginia with the United States on the subject of this road. Now I always had thought that the first agreement respecting it was made with Ohio. I never heard of such a compact as that he speaks of. He objects to my interpretation of the agreement of the General Government with Illinois, as though I wanted, on that agreement, a road to be constructed *through* my own State. But, sir, Missouri lies beyond Illinois, and if my construction be a sound one, as the fund of Missouri also is pledged, the road must reach Missouri, and will, of course, traverse Illinois. I hold, therefore, that my argument has not been shaken by the gentleman from Kentucky, (Mr. TRIMBLE.) I shall, however, now withdraw the amendment I offered, and allow the gentleman from Ohio (Mr. BRECHER) an opportunity to get at work upon the road as soon as he can, assuring him that I shall rejoice in his success.

Mr. BRECHER then moved to strike out all that part of the bill which contains the pledge above alluded to. He stated, in explanation, that the clause had been taken from the former acts, in all of which it was to be found. When it was proposed in the committee which prepared the bill, to retain this clause, he was himself opposed to it—for he considered the pledge as amounting to nothing, the fund being already expended. If this measure succeeded at all, it must succeed on grand national principles, and on these alone the appropriation must be made. He thought it best to be candid, and at once to place the object on its real grounds. He was confident that such a course in this House could never operate to injure the bill.

The question was then put on striking out, and there rose in its favor 58, against it 47; which not amounting to a quorum of the House, and the Chairman being about again to put the question, on motion of Mr. BRECHER, the committee rose, and, having obtained leave to sit again,

The House adjourned.

THURSDAY, JANUARY 13.

*Continuation of the Cumberland Road.*

The House proceeded to the unfinished business of yesterday, and went into Committee of

the Whole, (Mr. STERLING, of Connecticut, in the chair,) on the bill to continue the Cumberland road; and the question being on the motion of Mr. BRECHER, to strike out that part of the bill which goes to pledge the 2 per cent. fund arising from the sale of the public lands, to reimburse the sum appropriated,

Mr. McDUFFIE, of South Carolina, rose, and said that he wished clearly to understand what would be the effect of the provisions of the bill, and for that purpose he had risen to inquire what was the present condition of this fund of 2 per cent. of the sales of the public lands? If he had been correctly informed, the proceeds of that fund were all exhausted on the Cumberland road, and the money now to be appropriated was to be advanced on a fund which would not yield any returns, perhaps, in fifty years, perhaps never. He wished to meet the question fairly; and, if the money was to be given out of the Treasury for the object proposed, he wished at once to know it, that the House might not put on the statute book an act in a deceptive form, purporting that the money granted is to be returned, when no such thing is expected.

As the matter now stood, he should vote against the bill; but he wished for further information, and hoped that some of the gentlemen who had the charge of the bill would favor him by stating the true situation of the fund.

Mr. RANKIN, of Mississippi, observed, that, as it was his purpose to oppose the bill, he might as well take this time as any other to present his objections to it. He felt assured that he should not be so far misunderstood as to have it supposed by any gentleman on that floor, that he was otherwise than friendly disposed toward the system of internal improvement on which the House and the nation had last year entered, and he was equally certain that his friends from the West would not suspect him of being hostile to their interest; for, if any part of the whole Western country might be said to be closely connected in interest with the State he represented, it was that in which the contemplated object was proposed to be carried into effect. But, he did not think the course proposed was the best to be at present pursued. The great system of Internal Improvements ought not thus to be commenced in detail. What had last session been done as a commencement of the system, had been done on a scale, and in a manner, worthy of the nation. The first step in such a plan was to have a full survey of the whole field of operation, and then to consider what parts of the general system require the first attention.

The observations which had so repeatedly been made by the gentleman from Ohio, (Mr. BRECHER,) as to the comparative expenditures on the east and on the west side of the Alleghanies, were calculated to show that the commencement of the plan, in the manner now proposed, or in any manner similar to it, had a direct tendency to arouse sectional feeling and

awaken local jealousies. If, indeed, as had been contended by the gentleman, the Government is bound by contract to make this road, why, then, it must be made; but, if not, and if this measure stood on the same ground of its own independent merits as any other object of internal improvement, then it was proper to pause and consider whether the course proposed was the wisest and best. It was his own opinion that the Government is not bound by any contract to go on with the Cumberland road. The first act on this subject was that in 1802, when 2 per cent. of the proceeds of the sales of the public lands was reserved for the purpose of making a road from the navigable waters of the Atlantic to the navigable waters of the Ohio. The great object of this reservation was, that a chain of communication might be opened and secured between the States on the Atlantic and the States on the Western waters. This leading object of the original contract was to be taken as a guide in the interpretation of all the subsequent contracts which were entered into on the same general subject. None of those contracts except the first, stated where the stipulated road was to run *from*. One said it was to run *to* Indiana; another, that it was to run *to* Illinois, &c.; but, for aught in those compacts, it might start from Detroit, or from Boston, or from Charleston, or any other point in the Union. The great object was to secure a line of connection between the Atlantic and Western States, and this must constantly be kept in view in interpreting the terms *to* and *from*, as they occur in those contracts. This construction presents an object which was worthy of the legislation of Government. It was well known that the three great Western States were already sufficiently bound to each other by their relative situation; their interests were all closely allied, and they needed nothing to draw the bands closer, or render them stronger. But it was not so with respect to them and the Atlantic States. Between them was interposed a barrier of mountains, the natural effect of which was to separate their interests, and alienate their attachment from each other. Congress wished, so far as possible, to do away this barrier, and consolidate the interests of the Eastern and Western parts of the Union, by establishing a chain of direct and easy intercourse between them. Another reason in favor of this construction was the uniform course of the legislation which had been pursued on this subject. The original contract with the State of Ohio was made in 1802. In 1806, the appropriation was made for the Cumberland road; and every subsequent act from 1806 to 1819, had had the same uniform design and tendency, viz: to connect the Eastern and the Western States. The last pledge of the 2 per cent. fund was made in 1819; those prior had been only of so much of the fund as arose from lands in Ohio: then followed the pledge of the 2 per cents. from Ohio and Indiana; then of those of Ohio,

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Indiana, and Illinois. He presumed the latter was made with the consent of Illinois.

Mr. McLEAN, of Ohio, then rose, and addressed the committee as follows :

Coming as I do from a section of the country through which this road is expected to pass, and entertaining the views I do as to the great benefits that will result from it, not only to the particular part of the country through which it may be constructed, but to the United States in general, I feel it to be my duty to contribute my feeble exertions for the accomplishment of the object. The friends of this bill are willing it should be considered by Congress without reference to that provision contained in it, for refunding the appropriation for the 2 per cent. fund. It is presented to the consideration of the committee as a great national object, and, as such, we ask and hope for its passage.

Mr. Chairman, the commencement and completion of the national turnpike road to Wheeling, has been received by the West as a sure indication that a great national road would be constructed, under the auspices of the General Government, through the States north of the Ohio, to the Mississippi River. In the completion of this work, the Western States are not alone interested ; the Eastern and Middle States, if not to the same extent, are, notwithstanding, so far interested, as to ensure, on their part, I trust, a most hearty concurrence in support of the measure. It would perhaps be unkind to anticipate any thing like a united opposition from any section of the country ; for, so general are the benefits which will result from it, that, to suppose any hostility from the South, or the North, would ascribe to them less liberality of feeling than I am conscious they possess. Sure I am, sir, as it regards myself, and, in this respect, I believe I could answer for the gentlemen of the West in general, a most cordial co-operation would not by them be withheld from any measure calculated, in equal extent, to promote the interest of any section of the Union.

Mr. Chairman, the claims we have, from the work already executed, are entitled to the respectful consideration of every gentleman. But, the general good that will result from the work, is of itself a consideration sufficient, it seems to me, to secure the favorable opinion of every member of this House who is disposed to sanction an internal policy, more calculated than any other to promote the great interests of the nation. Some, perhaps, who may be unfriendly to the policy, or may feel hostile to this road, may make some objections on account of the expense which has been incurred in making that part of it already executed. This, however, can afford no substantial objections to its prosecution and completion. If any abuse has existed, the knowledge of its existence points out the surest method of guarding against it in future. Some experience has been acquired which, in making improvements of this description, is of incalculable value.

The price of labor is now greatly reduced, and every consideration seems to point out the present as the most favorable period for the extension of this great national work.

Mr. Chairman, those who have travelled this road to Wheeling, or who reside upon it, are only capable of properly appreciating its advantages.

In a favorable season for emigration, the traveller upon this highway will scarcely lose sight of passengers, of some description. Hundreds of families are seen migrating to the West, with ease and comfort. Drovers from the West, with their cattle, of almost every description, are seen passing eastward, seeking a market on this side of the mountains. Indeed, this road may be compared to a great street, or thoroughfare, through some populous city—travellers on foot, on horseback, and in carriages, are seen mingling on its paved surface, all seeming to enjoy the pleasure of the journey, and to have a consciousness of the great benefits derived from it. With much propriety may it be called a national road : for its advantages are so diffusive, that no other term would be found equally appropriate. In another point of view the name is proper—it is the only lasting monument of the kind that has been constructed by the beneficence of the nation, and should this road be completed, and none other of a national character, advancing the internal prosperity of the country, be constructed, it would of itself constitute a more durable monument of its glory, than has been left by any of the free Governments which have preceded our Republic.

Sir, I defy any man of ordinary sensibility, or common patriotism, to travel that part of this road which has been completed, and not to feel proud of his country. I will venture to assert, however strongly it may be controverted, that no sum of money, of the same amount, has been appropriated from the Treasury, since the adoption of our constitution, so much to the advancement of the public interest.

Sir, all who feel a proper degree of interest, it appears to me, in preserving our Union, cannot be too solicitous to secure it by removing every obstruction to a continued intercourse between the different parts. In effect, the most remote parts of our country are brought near together, and identified in interest, by turnpike roads and canals ; and when commercial intercourse is facilitated in this way, connections are formed, and interests become so interwoven, that nothing can separate them.

This policy, and this only, can unite the different sections of our country under the adverse circumstances which may befall us. This alone can render our Government as permanent as its principles are sound and favorable to liberty.

Mr. Chairman, we may theorize as much as we please, and talk of the moral sentiment that everywhere prevails, in our country, but, unless our citizens are united in interest, there is no liga-

ment sufficiently strong to bind the different parts together. Our country embraces all the varieties of soil, of climate, and production; our interests are often variant and conflicting. In some conflicts of opinion, and of interest, it is to be feared, animosity of feeling may be indulged, until a settled hostility shall prevail, and this may lead to the most direful consequences; but, bring the remote parts of the country together by turnpike roads, and no danger need be apprehended. I can name no sections of the country more important to connect in interest, than the East and West—there seemed to be a natural barrier to their intercourse, but this has in part been done away by that part of this road already completed—and I trust in this is the commencement of a policy which shall only cease after the great objects shall have been accomplished. The extension of the national road through Ohio, Indiana, and Illinois, will extend the advantages to the public in the same proportion as the length of the road shall be increased. Every individual who may travel this road, or purchased goods which have passed over it; all who may have stock to send to market, or products of any description, that will bear a land transportation; and all who own land convenient to this road, will experience an almost incalculable benefit from its extension.

Will Congress withhold this boon from the country? Will they deny this act of justice to the West?

Mr. Chairman, if this were to be a business of mere calculation; if it were to be estimated by dollars and cents, as a merchant would be influenced to purchase his wares; yet it might be demonstrated that the work should be done. The General Government will be benefited by the enhancement in the price of the public lands to an amount nearly equal to the expense of the road. But when this is taken in connection with the advancement of individual wealth, and the general convenience, there is nothing that can authorize a moment's hesitation in sanctioning the appropriation.

Mr. Chairman, knowing as I do the feelings of the citizens of the State of Ohio, on this subject, and especially that portion of them which I have the honor more immediately to represent, I can but feel and express the most anxious solicitude on this subject, and I will cherish a hope it will succeed."

Mr. JENNINGS asked the indulgence of the committee a few minutes. He said that, since the committee has refused to amend the bill, by striking out the section which contained a pledge upon the two per cent. fund of Indiana and Illinois, for the repayment to the Treasury of the United States, of the money, the appropriation of which was now contemplated, he would give his reasons why he should be compelled to oppose the passage of the bill. In the discussion of this subject, the construction of the compacts between the United States and the States northwest of the Ohio River, had

been introduced, and which, if the construction of those instruments by some gentlemen, were to be considered as correct, would tend to confirm the pledge, which, by an act of the 3d March, 1819, Congress had imposed upon the two per cent. fund of Indiana and Illinois, for the reimbursement of \$250,000 appropriated to complete the Cumberland road to Wheeling. The gentleman from Mississippi, if he understood him correctly, concluded that the power of Congress to control the two per cent. fund of those States, was a general power, which could be exercised at pleasure, so far as it regards the local expenditure of this fund.

If the gentleman's conclusions were correct, that the original intention of Congress was to unite the navigable waters of the Atlantic with those of the Ohio River, and none other, why should the compact made by the United States with the State of Ohio, provide, that this fund should be applied, under the direction of Congress, to making roads, not leading from the waters of the Atlantic to the Ohio merely, as the gentleman seemed to suppose? But the compact provides—that the fund shall be expended in making roads from the waters of the Atlantic—"to the Ohio, to the said State, and through the same." The compact provides, moreover, that "*the consent of the several States through which the road shall pass*," shall be obtained previous to making such road. I would ask, Mr. Chairman, *what road?* If the whole of the two per cent. fund of Indiana and Illinois has been rightfully pledged, and if so, correctly expended, in the construction of a road to the *Ohio River*, as gentlemen contend, what has the consent of the States west of the Ohio to do with, and what bearing can such consent have upon, the operation which shall take place under the appropriations of this fund? I admit that Congress has the power to appropriate the two per cent. fund of Indiana to making a road through the State of Ohio to the State of Indiana; but I deny the right of Congress, although the power has been exercised, to apply the two per cent. fund of Indiana to the making a road from the navigable waters of the Atlantic to the Ohio; and I shall not, therefore, give my vote for the appropriation of money, which carries with it a pledge upon the two per cent. fund of Indiana, until this road is located, at least, to the Mississippi River. The seat of Government of the State which, in part, I have the honor to represent, is located permanently, and this road, if ever we are to have one, will pass through its site. But this road can be located only by the authority of Congress. In the prosperity of the capital of the State, the citizens of Indiana have not only an interest, but an interest which involves the value of real property, to a considerable extent; but she has no control, nor is her interest in having this road located, to be regarded by the provisions of this bill. That it was the original intention of Congress that this road should be located, opened, and con-

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structed, to the State of Missouri, so far as the fund might be adequate to the object, I have no doubt; and that it was equally the intention of Congress that the two per cent. fund of Ohio should be expended in making a road from the Atlantic waters to the said State; and that the two per cent. fund of Indiana should be expended in making a road through Ohio to Indiana, and that of Illinois, in like manner, through Indiana to Illinois. But the constructions, and the character of the road contemplated to be constructed by the provisions of this bill, will expend every cent that may hereafter accrue, before this road, such as it is intended to be, shall reach the seat of Government of Ohio; and thus the location and opening of this road through Indiana will ultimately have to depend upon the bounty of Congress, instead of resting upon the compact. That the original intention of Congress comports with the construction of those compacts with the United States, and "the several States through which the road shall pass," which I consider correct, is evinced by the course adopted by Congress, under whose authority Commissioners were employed, a few years since, to locate this road, through those several States. And why this measure on the part of Congress, if the constructions which have been given to the compacts be correct? The State of Indiana, in accepting the conditions offered by Congress, as an equivalent to her renouncing any right to tax the lands of the United States, &c., placed a value on this fund, and it formed no unimportant part in the *aggregate consideration*, which induced the State to enter into a full execution of the contract on her part. But the disposition which has been, and is now proposed to be made of this fund, is, in effect, to destroy the just expectation of the State in relation to it; and, while I admit the power of Congress to pass this bill—the previous pledge of which has been imposed upon the two per cent. fund of Indiana, when the appropriation was made in 1819, to complete the Cumberland road to Wheeling, was as much a pledge upon that fund, for making a road to any or all the States bordering upon the shores of the Ohio and Mississippi Rivers, as it was a pledge to redeem an appropriation made for the construction of a road leading to Indiana. He regretted that the construction of those compacts had not been more generally examined than he supposed they had, and he could not view the effects produced or to be produced by constructions which had been given to them, as tending to any other result, than a violation of the contract on the part of the United States with the State of Indiana.

Mr. BUCHANAN said, that, since the adjournment of the House last evening, he had turned his attention to the compact between the United States and the State of Ohio, and he believed if the committee would indulge him for a few minutes, he could clearly explain its character.

By the terms of the original compact of 1802, five per cent. of the net proceeds of the lands within the State of Ohio, were to be applied "to the laying out and making public roads, leading from the navigable waters emptying into the Atlantic, to the Ohio, to the said State, and through the same; such roads to be laid out under the authority of Congress, with the consent of the several States through which the road shall pass."

It is clear, then, that the compact gave to the United States exclusive authority over the application of the whole of this fund. The objects upon which they were bound to expend it, were of a twofold nature. The first, roads leading from the Atlantic waters to the State of Ohio; and the second, roads leading *through* that State.

The people of Ohio believed, that the portion of this fund which was destined to the construction of roads *within* their State, could be more judiciously and economically expended under the authority of their own Legislature, than by the General Government. In this opinion they were certainly correct. They, therefore, asked Congress to grant them this privilege, and in pursuance of their request, an act was passed on the 8d March, 1808, directing the Secretary of the Treasury to pay to the State of Ohio three per cent. of the five per cent. fund, to be applied by their Legislature "to the laying out, opening and making roads, within the said State, and to no other purpose whatever."

Thus it will be perceived, that the five per cent. fund, which had originally been placed under the exclusive control of the General Government, was separated into two parts. The two per cent. of it was retained by Congress, to be applied to the construction of roads between the Atlantic waters and the State of Ohio; and the remaining three per cent. was given to the State of Ohio, at its own request, to be expended in making roads through that State. It is, therefore, manifest, that, since 1808, the United States have never been bound by the compact, to make any roads *within* the State of Ohio. That obligation passed from them to the Legislature of the State, and three-fifths of the whole fund was granted to them, to enable them to fulfil it. Out of this fund the State of Ohio, previous to the 24th January last, had received the sum of \$287,548 94. With what degree of force, then, or even plausibility, it could be contended by gentlemen, that Congress are bound by the compact to make this road *within the State of Ohio*, Mr. B. said, he would cheerfully leave for the committee to determine.

Mr. B. said that the next subject of inquiry to which he wished to direct the attention of the committee, was, the manner in which the United States had executed the portion of the trust which remained to them. Have they faithfully applied the whole of the two per cent. which they retained, to the construction

of roads between the waters of the Atlantic and the State of Ohio? The amount of it which had resulted from the sale of lands in that State, prior to the report from the Treasury during the last session, was \$187,786 31, and from Indiana, Illinois, Missouri, Mississippi, and Alabama, \$71,628 11. The aggregate is \$259,409 42.

Congress have expended upon the Cumberland road about \$1,700,000, or nearly seven times the amount of the two per cent. fund of all these States. They did not stop short at a literal compliance with the terms of the compact; but have greatly transcended them, and acted with the utmost liberality towards the Western people. That fund has been already pledged to us for the repayment of more than \$1,400,000. No gentleman on the floor can, for a moment, suppose that we shall ever receive from it any thing like this amount. In order to realize such a supposition, lands within those States must yet be sold to the amount of \$70,000,000. Yet, notwithstanding, the present bill pledges this very fund to reimburse the expense of continuing the Cumberland road from Canton to Zanesville. It is certainly idle and absurd for us to place a pretext so flimsy before the public, in any act of legislation. Gentlemen who advocate this bill should at once abandon its defence upon the ground of the two per cent. fund and compact, and support it upon the principle that it is an internal improvement, which, independently of these considerations, should be undertaken at this time by the General Government.

Mr. B. said that, as he had risen only to advance his ideas respecting the compact with Ohio, and the manner in which the United States had executed their trust, he would no longer, at present, press himself upon the attention of the committee. He would merely state as a fact, in conclusion, that the construction of the Cumberland road had cost more than \$18,000 each mile.

Mr. Ross, of Ohio, then rose, and said, that the exposition given by the gentleman from Pennsylvania, of the three per cent. and the two per cent. fund was a very correct one, and he recapitulated in substance the history of those funds in respect to the State of Ohio. Thus far, he observed, there was no dispute. Now, in the act to admit the State of Indiana into the Union, we find precisely the same expressions as in the act to admit Ohio. Five per cent. of the sales of the public lands is reserved for the construction of roads *to and through* Indiana. If this reservation of two per cent. is appropriated to roads *to* Indiana, (the same as for roads to Ohio,) and the three per cent. is placed under the control of the Legislature of Indiana for roads *in* that State, (the same as for roads in Ohio,) Mr. R. expressed himself not a little surprised that the gentleman from Indiana (Mr. JENNINGS) should be opposed to the present bill. It is a strict compliance with the compact of the United States, that two per

cent. should be spent on a road leading to the State of Indiana. The remaining three per cent. had, from time to time, been drawn from the Treasury by that State for roads within her own limits. But the two per cent. is placed by the compact at the absolute discretion of the General Government. The present road may indeed go *through* the State of Ohio, yet it leads to Indiana. The compact does not say that the General Government shall bring a road *to the line* of that State; if the road were in Kentucky or in Virginia, and yet led to Indiana, it would be sufficient under the compact. Some gentlemen object to the object, because, at the last session, Congress voted a general system of Internal Improvement. But there must be some starting point in carrying that system into effect. And there will be precisely the same difficulty after the survey is made, as there is now; for gentlemen surely do not seriously mean that the General Government is to undertake, simultaneously, roads and canals over all the United States. Here is a beginning made: sixteen hundred thousand dollars have been laid out upon it; the surveys are made; a random line has been run from Wheeling to the Mississippi. A road from Wheeling to Zanesville has been laid out and actually begun. This is not an exception to a general system of Internal Improvement. It happened to be commenced before that system was adopted. Yet it is a link in the same chain.

But the gentleman from Pennsylvania insists that Congress, by what it has advanced on the Cumberland road, has fully complied, and more than complied, with its contract with Ohio. But, sir, I ask, was that road made for Ohio alone? Has not the very State which that gentleman represents, with so much benefit to it, and so much credit to himself, has not Pennsylvania enjoyed the same benefit from it as Ohio? I believe facts will prove that it has enjoyed greater. Nor Pennsylvania alone—Virginia, too, has received a kind blessing from the same source; so, in a degree, has Delaware also. In fact, sir, all the States of this Union have, to a certain extent, participated in the benefit; so that, as far as the argument of the gentleman is intended to show that the General Government has fulfilled its contract to Ohio, it is of no force. I might indeed say, the Government has fulfilled its contract to itself and to the country. Pennsylvania, rich, populous, and flourishing, enjoys the advantage of, he believed, about three thousand miles of good roads. The gentleman, therefore, is able to appreciate their value. He hoped that State would follow the example of Ohio and of New York. And if we extended our view to future times, he was persuaded it would be found there was not so great a diversity of interests between that State and her neighbors, as some of her citizens seemed inclined to suppose. He thought, upon the whole, that nothing could be urged conclusively against the present bill from the contracts of the General Government with

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the new States, nor from the advances on the Cumberland road, as if made for Ohio alone.

Mr. Wood, of New York, observed, that he deemed the proposition before the committee premature. That it was idle to say that the United States were under any obligation to make the road in question. That the Government had agreed to expend two per cent. of the avails of the public lands on roads from the Atlantic to the Ohio; and, by the gentleman's own showing, the Government had already expended more than that fund would amount to in many years. That the pledge was redeemed, the obligation cancelled, and that no claim on that ground could be sustained. The present application was, therefore, for a sum of money from the Treasury, to be expended on Internal Improvements. Sir, said Mr. W., Congress have not yet determined that they will adopt a system of Internal Improvements. At the last session they appropriated \$80,000 for the purpose of exploring the country, and having such routes for roads and canals selected, as should appear to be of national importance. That, when the report of the Commissioners appointed for that purpose should be made to Congress, the question would probably be determined. That, when that subject should be agitated, if it should be determined to embark in a system of Internal Improvements, several questions must be previously settled among them; one would be, to determine whether the money to be appropriated ought not to be apportioned among the several States according to their representation in Congress, to be expended under the direction of their respective legislatures, who were more competent to oversee such business than Congress, and better able to guard the fund from the impositions to which appropriations by Congress are liable.

Mr. P. P. BARBOUR rose, and said, that he was not about to enter at large into the question before the committee, but merely to state a few facts, which might have a bearing upon it. He was aware that the motion yesterday made to strike out that part of the bill which goes to pledge the two per cent. fund, had, at the present sitting, been decided in the negative, and that all arguments or observations in favor of such an amendment would now be out of order. But if, said Mr. B., it is in the contemplation of Congress to commence a great system of internal improvement, (for which, however, in any shape, I cannot go, as being opposed to the principle,) it seems to me that the object now presented is as much entitled to favor as almost any other that can be mentioned. He should, indeed, be obliged to vote against the bill, and would do so, even were it for the sole benefit of his own constituents. Yet still he thought the object as good as any other. The measure, however, ought at once to be put (where the gentleman from Ohio had candidly placed it) on the footing of an absolute appropriation, not to be returned from any fund whatever. The pledge was all out of the question. Congress

has the direction of two per cent. of the proceeds of the sales of public lands in the northwestern States, for the purpose of making roads leading to those States. It has expended somewhere about \$1,800,000. Now, this is two per cent. on ninety millions of dollars. It would be found that the whole sales of lands in the northwestern States, up to 1819, fell short of \$27,000,000, of which less than \$17,000,000 had actually been received. Here, then, was the Government in advance two per cent. on ninety millions, and not seventeen millions realized yet. Surely, it was vain to talk of any hope of reimbursement from such a fund. Let us not, said Mr. B., hold out a false and delusive hope. Commending the candor of the gentleman from Ohio, (Mr. BEECHER,) in placing the subject at once and avowedly upon its real ground, Mr. B. expressed a hope that, when the bill came into the House, the clause containing this pledge would be stricken out. And he concluded with repeating that, did not his views of constitutional restrictions prevent him from voting for any appropriation for internal improvement, he should certainly vote for the present bill.

Mr. McDUFFIE then rose, and said, that he now perceived the question before the committee was a question of direct appropriation for a road. If the arguments of the gentlemen from Indiana and Illinois were correct, (and certainly those arguments presented matter of grave consideration,) the two per cent. fund of those States cannot be appropriated to the present object. It follows, that the two per cent. in Ohio alone can be appropriated to it. No one can deny that the whole of this fund has been expended. So far, then, as the arguments of the gentlemen prove any thing, they show that what is required, at present, is an absolute appropriation of money from the Treasury. This point being settled, he would say a few words on the measure, as constituting a part of the general system of internal improvement. Such a system, Mr. McD. observed, must be formed and conducted on national principles. Yet, it was unavoidable, in the nature of things, that, in the prosecution of it, certain parts of the country will be benefited more than others. The question then arises, How shall we proceed? I answer, in the first place, with the utmost caution. If we act otherwise, and through haste, ignorance, or oversight, we shall fail in any great work we undertake, shall occasion a reaction which will go far towards destroying the system; and he would put it to the friends of internal improvements, whether it will be advisable to run any risk of such a result? He was, therefore, opposed to acting on the system, till a general view had been presented to Congress of the objects to be attempted.

As to the claim of the West on the National Treasury, he should only say that that Treasury never contributed any thing worth naming, for the purpose of internal improvement, for



the advantage of any other State than Ohio. What, asked Mr. McDUFFIE, are the national works which have been done by the General Government? This road was certainly the chief, and he had almost said, the only one—two millions had been expended upon it. There was also some small appropriation for the improvement of the Ohio and Mississippi Rivers. I, said Mr. McDUFFIE, belong to a State which, on this subject, has fair claims on the Government, yet I do not now solicit anything on her behalf. We are told that, because the work has been commenced, we must therefore go on with it. But, sir, said Mr. McDUFFIE, I argue in a manner directly the reverse. I do not think because we have done something for one part of the Union, we must, therefore, do more for it. The work, I acknowledge, is an important one; but other objects are important too. The population of the new States is comparatively sparse; and we are asked to neglect the denser population of the Union, for their benefit. I do not think the object proposed has any peculiar claim, at this particular time. Before he sat down, he would state what were his general views on this matter. It appeared very clear that, for at least ten years to come, all the surplus revenue of this country would be exhausted in paying the public debt—and, from the character and well-known wishes of the nation, he presumed that it must be the great object of the next administration to pay that debt. There could be but a small surplus left to be applied to internal improvements—sufficient, however, to defray the expense of all the requisite previous measures. All the surveys could be made, various routes explored, and the comparative expense of different projects ascertained. Then the nation would know precisely what was the work before it. Nor was it more than proper that ten years should be consumed in preparing to accomplish so great a system, on the safest and most solid grounds.

Mr. CLAY now rose, and, expressing a desire of presenting to the committee his views on the general subject, requested, as the hour was late, the indulgence that the committee would rise. The committee rose accordingly, and obtained leave to sit again.

FRIDAY, JANUARY 14.

*Cumberland River.*

Mr. REYNOLDS, of Tennessee, submitted the following resolution for consideration:

*Resolved,* That a committee be appointed to inquire into the expediency of appropriating a sum of money not exceeding ——— dollars, for the purpose of improving the navigation of Cumberland River, in the State of Tennessee.

The resolution having been read—

Mr. REYNOLDS addressed the Chair as follows:

Mr. SPEAKER: Should it be in order, I will briefly submit to the House my views on this

subject. We have been engaged, yesterday and the day before, in discussing the bill to extend the *Cumberland Road*: the object of the present resolution I have submitted is to improve the navigation of *Cumberland River*. But, before I proceed, allow me to say, that I lament much, indeed, at the course the debate has taken on the extension of the National Road; and, without entering into the merits of that discussion, it is to be regretted that the subject of those reservations and conditions of State rights ever had been introduced into the bill; for, it is evident to my mind, from the discussion already had, without particularly examining the statutes, that the per centums stipulated by those new States arising on the sale of the public lands, were certainly intended for the internal improvement of those States, and not for national purposes. In my humble opinion, sir, it would have been more preferable to have asked, by the bill on your table, an appropriation for the object contemplated by the bill. Permit, me also, to state, that it is much to be regretted that any allusion has been made to the general appropriations made for the benefit of the country heretofore. Sir, the northern and eastern parts of the Union are much older than the West. The great population and situation of the country commanded the resources of the nation. And there are many expenditures of the public purse, from the nature of things, that will always be confined to those regions, such as building public ships, erecting forts on the Atlantic board, and on the Pacific Ocean, in those independent States that will spring out of the Oregon Territory. For my part, sir, when a national object is necessary, and ought to be carried into effect, I shall not stop to inquire whether the money is to be expended on the south or the north side of the Potomac. In a republic like ours, forming a grand confederated Union, the important inquiry is, Has the measure called for, a tendency to promote the interest, honor, and happiness of the nation? Then, I trust, as we have not had occasion of having much of the public moneys distributed in the internal improvements of the West, I still will rely on the justice and magnanimity of the *good old thirteen States* in enabling us to carry on our national improvements in the Western States.

It will be recollected, Mr. Speaker, that, at the last session of Congress, a bill was introduced to improve the navigation of the Mississippi River. To that bill it was my intention to have offered the present proposition as an amendment. But, knowing how much the whole Union is interested in the navigation of that grand river, and, lest the great object should be defeated by adding too many amendments of the kind, I did, at the request of some of my friends, and particularly my honorable friend from Kentucky, (Mr. HENRY,) who so ably advocated the bill, abstain from offering the amendment, but with the express determination of presenting it to the House at this session. The

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bill passed, and is now a law of the nation, by a handsome majority.

It may be objected, Mr. Speaker, that Cumberland River is too local for the General Government to take it into the estimate of a general system of internal improvements. But, gentlemen have only to look at the map to see the great and central position of that noble stream. It is navigable about two or three hundred miles and upwards, and meanders a country of from four to five hundred miles. The country is remarkably fertile and healthy. It is the grand high road for the great body of the population of West Tennessee, in the transportation of their produce to the great emporium of the West, New Orleans; and, besides, it is equally claimed and enjoyed by a very important and interesting region of the Union, I mean that part of Kentucky known by the name of the Green River Country. This is a part of the Republic very extensive, fertile in the extreme, and capable of sustaining an immense population. But to the Union, the river Cumberland is interesting in many points of view. The great water powers for machinery on the rivers and branches emptying into it are immense, and will, at no distant day, command the attention of the enterprising manufacturer and agriculturist. We have men of great public spirit amongst us, but there is a vast outlet for more. There are, in the vicinity of those streams, mountains of iron ore, which are inexhaustible, and of a quality equal, if not superior, to any in the United States. Sir, the boasted county of Cornwall, in England, cannot produce better iron. And, besides, the fertility of our soil is such, that hemp, tobacco, and cotton grow in great perfection. The House will perceive, then, without any comments from me, the great importance of this river to the United States.

But, Mr. Speaker, this is not all. It is, at this moment, of deep interest to the great and patriotic state of Pennsylvania. There are now, I expect, from ten to fifteen steamboats running regularly between Nashville and the city of Pittsburgh, and from Nashville to New Orleans, at all seasons that the waters will admit of it. This is not all, sir. This stream will be of great importance to the flourishing State of Missouri, and all other States that may border on that great river, Missouri, in consequence of the article of cotton. With those important States of Ohio, Illinois, and Indiana, our intercourse and trade will be greatly facilitated. And when the great canal, now in contemplation, unites the Potomac River with the Ohio, it will open new resources and advantages to Maryland and Virginia, and will afford a direct communication by water with us. And the time is not far distant, sir, when the great and powerful State of New York, will, by her great resources, and her astonishing progress in internal improvements, show to this Union the necessity as well as policy, in a political and commercial point of view, of

uniting, by canals, the great northern Lakes with the Mississippi River. Then, sir, as one of the Western States, in point of trade, we shall be united with the Northern, Southern, bordering on the Gulf of Mexico, Eastern, and Middle States. It will then be no uncommon event to see the hardy and enterprising sons of the North and East peaceably exchanging with the people on the banks of Cumberland every manufactured article of luxury and comfort, for the raw material, when, in all probability, the old world may be deluged in all the horrors of war, and all communication cut off betwixt us and them, perhaps forever.

But, Mr. Speaker, there is still another topic connected with this subject, and, I trust, the House will allow me briefly to state it. There is on one of the streams of Cumberland, called Harpeth River, one among the finest sites for a national armory in the United States, and, perhaps, in the world. The stream is large and bold. The country around it, to a great extent, abounds in the finest forest, and there is no end to the ore in its vicinity. Besides, I have been lately informed that stone-coal has been found in the same neighborhood; and the country is considered very healthy. This great and celebrated site is only twelve miles from the mouth of this river, and can, with a trifling expense, be made navigable always when Cumberland is navigable. Indeed, when the latter river rises, the back water nearly reaches the site. The navigation of Cumberland from the mouth of this river is as good as the Ohio. The great impediment to the navigation of this important stream is what is called the Harpeth Shoals, above its mouth, which is much against the flourishing town of Nashville, and the upper country. I think, however, that \$20,000 or \$30,000 will be a sufficient sum to remove every obstruction in the river, high as Oar-thage.

Mr. Speaker: When we look at the happy medium in which West Tennessee is situated, as it regards climate, soil, and health, and when we consider there is all the great materials for the establishment of a great armory on this interesting stream, there is another consideration of great moment. These watercourses rarely, if ever, are frozen in winter. How important to the Union will it be, in case of a war, that we can, in the dead of winter, at a moment's warning, transport our arms and munitions of war to the seat of war in a campaign to the South. This is a consideration that ought to have weight with every gentleman who may have to act finally on this subject. For my own part, I do not hesitate to pronounce it the most eligible situation in the United States. Is it not remarkable, Mr. Speaker, that those Commissioners have not yet made their report on this subject? We were informed by the gentleman from Ohio, (Mr. BRECKEN,) that it would be delivered to this House in six or eight days. It is now more than two weeks since the gentleman moved to lay my resolution

on this subject, on the table. From a letter I have received from Pittsburg, and the session going off rapidly, I shall take the liberty of calling up the resolution on to-morrow. At all events, if it is not our good fortune to have the armory where nature has pointed it out, I still hope, however, that the Government of the United States will enable us to improve Cumberland River; and if we are not allowed to furnish our armies with our arms and munitions of war, yet I trust our citizens in Tennessee will be enabled to mingle their laudable efforts with their brethren of other Western States in supplying our armies, when the case may happen, and the city of New Orleans and Louisiana with the products of our land.

Sir, I was highly gratified to hear, the other day, from an honorable gentleman from Virginia, (Mr. MERRICK,) and who is a member of the Committee on Roads and Canals, that it is contemplated, by that committee, to offer to the House a general system of national improvements. Hoping, most sincerely, that they will take my proposition into consideration, I shall take the liberty now to move that the resolution lie on the table for a few days.

The resolution was then ordered to lie on the table.

#### *Chesapeake and Delaware Canal.*

Mr. HEMPHILL moved to dispense with the orders of the day, for the purpose of taking up the bill "authorizing a subscription to the stock of the Delaware and Chesapeake Canal Company."

The motion was carried, ayes 92.

The House accordingly went into Committee of the Whole, (Mr. TOMLINSON in the chair,) on that bill.

Mr. HEMPHILL (the chairman of the committee which reported the bill) rose. He said, the committee would perceive that the bill, which was now submitted to their consideration, authorized a subscription in behalf of the United States for 1,500 shares, which is equal to \$500,000 in the stock of the Chesapeake and Delaware Canal Company; the Government was to receive its proportion of the dividends, and the Secretary of the Treasury was to vote at any election for the officers of the company, according to the number of shares subscribed.

The importance of the question presented by this bill, said Mr. H., will, I hope, justify me in occupying the attention of the committee for a short time. The subject of this canal, and the proceedings connected with it, are, I know, very familiar to some of the committee, but there are others I presume, who are not so well acquainted with them; and, for this reason, I will take the liberty of giving as brief a history of the canal as I can.

Soon after the system of canalling became so universal in England, and the benefits of canals so generally known, a canal to connect the waters of the Delaware with the Chesapeake Bay was contemplated, and many surveys to carry this design into effect, were made ante-

cedent to the Revolution; when Mr. Latrobe surveyed the route, which was, I believe, in 1816, he mentioned that 82 surveys had been previously made—and I expect that there had been 10 or 15 surveys and examinations of the grounds since that period.

The first Legislative step to effect the object was taken by the Legislature of the State of Maryland, who on the 7th of December, 1799, passed a law to incorporate a company by the name of the Chesapeake and Delaware Canal Company. This law proposed to co-operate with the States of Delaware and Pennsylvania; and these States, impressed with the importance of the subject, not only as it regarded themselves, but in its relation to the nation at large, did not hesitate to act conjointly with the State of Maryland, and they respectively passed laws to accomplish the object of a water communication between the waters of the Delaware and Chesapeake Bay. On this subject eleven laws have been enacted; but it will not be necessary for me to detain the committee by referring to them, except so far as to exhibit their leading provisions. The acts of the respective States authorized the opening of books for subscriptions to the amount of \$500,000, in shares of \$200 each; and incorporated the subscribers with ample powers to locate the route, to acquire the title to lands in the States of Maryland and Delaware, through which it should pass, and to cut and finish the canal, and to keep it in repair forever.

The necessary regulations for the payment of tolls were prescribed by the respective acts. And it was stipulated, that the canal and works, when completed, should forever thereafter be esteemed and taken to be navigable, as a public highway, free for the transportation of all goods, commodities, or produce whatsoever, on payment of the tolls imposed by the acts, and that no additional toll or tax whatever, for the use of the water of the canal, and the works thereon, should, at any time, be imposed by all or either of the said States. Other arrangements took place between the States, some of which not bearing directly on the canal project, need not now be mentioned. I will refer to one which may be of importance, as connected with the prosperity of the canal: By the first Maryland act, of the 7th December, 1799, there is a provision that the act should be of no force or effect until a law be passed by the Legislature of Pennsylvania, declaring the river Susquehanna to be a highway, and authorizing individuals or bodies corporate to remove obstructions therein, at a period not exceeding three years, from the first day of March, 1800. A law to this effect was passed by the Legislature of Pennsylvania.

The acts contain the usual provisions for the election of a President and Directors, for the transfer of the stock, the collection of the tolls, and the payment of dividends; and also authorizes the company to increase the subscriptions whenever necessary.

By virtue of the laws of these three States, a

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company was legally incorporated, who, in April, 1804, after causing many surveys to be made, located the canal in favor of what was called the Upper Route from Welsh Point to Christiana; the Elk River, with the resources of Christiana and White Clay Creeks, were supposed to contain a sufficiency of water.

The waters of the Elk River were purchased, including the route of the feeder and the necessary lands; and the work to construct the feeder, commenced on the 2d of May, 1804; and was earnestly prosecuted during the years 1804-5, when a failure of funds compelled the Board, after the expenditure of about \$100,000, to suspend the whole undertaking. The cause of this disaster is difficult now to trace; the stockholders failed to pay their instalments, owing, in a degree, perhaps, to the investments of their funds in the numerous Banks and Insurance Companies that were created about that period, which promised high and immediate profits; still the failure, it may be imagined, would not have occurred if the same practical knowledge and public spirit had existed then on the subject of internal improvements, which are now manifested almost every where.

The company, being without funds, made applications for aid whenever there appeared to be any hope of success, to Congress and to the Legislatures of the States of Maryland, Delaware, and Pennsylvania.

The subject was introduced to the consideration of Congress, in 1806, by a memorial signed on behalf of the company, which was accompanied by an able production entitled "Observations respecting the Chesapeake and Delaware Canal."

Favorable reports, in the Senate, were made in 1806, '7, '9, '12 and '18, illustrating the great importance of the subject, and the advantages to be derived to the General Government, by a water communication from the Delaware to the Chesapeake Bay.

It was recommended to grant to the company certain quantities of land, from which source funds could be raised to complete the work; and, to this effect, several bills passed in the Senate—one in the session of the tenth Congress, and two in the eleventh Congress.

The House of Representatives have also had the subject under consideration, at different terms, from the year 1806 to the year 1824, and many resolutions have been adopted, and several committees to whom the subject had been referred, respectively reported bills to the House to authorize the subscription of stock. Bills of this description were reported in 1812, '18, and '18, and the bill now on the table was reported at the last session. In the mean time laws have passed favorable to the canal, in the States of Maryland, Delaware, and Pennsylvania.

On the 18th of December, 1812, the Maryland Legislature enacted a law, the preamble of which I will be allowed to read—it is as follows: "Whereas, during the time of war against the

United States of America, the completion of the work of the Chesapeake and Delaware Canal would be greatly beneficial to the United States, by forming the great link of an inland navigation of six or seven hundred miles, and thereby establish a perfectly safe, easy, and rapid transportation of our armies and the munitions of war, through the interior of the country, and which would ever tend to operate as a cement to the union between the States; and, whereas the prosperity and the agricultural interest of the State of Maryland, the Commonwealth of Pennsylvania, and the Delaware State, are more deeply interested than their sister States, in the useful work of opening a communication between the Chesapeake Bay and the river Delaware, by means of the said Chesapeake and Delaware Canal—therefore, in order to enable the President and Directors of the said canal to prosecute and finish the important work, be it enacted, &c."

The first section of the act authorized a conditional subscription, on the part of the State of Maryland, and declared that if the United States should subscribe seven hundred and fifty shares, the Commonwealth of Pennsylvania three hundred and seventy-five shares, and the State of Delaware one hundred shares, in the Chesapeake and Delaware Canal Company, in such case, the Treasurer of the Western Shore was authorized to subscribe, in behalf of the State of Maryland, two hundred and fifty shares.

On the 25th of March, 1818, the Legislature of the State of Pennsylvania passed a law similar to the law of the State of Maryland, and embraced the preamble in full. It authorized a subscription to be made, on the part of Pennsylvania, of 875 shares, if the United States should subscribe 750 shares, the State of Maryland 250 shares, and the State of Delaware 100 shares.

These laws never went into operation, as the United States and the State of Delaware did not subscribe; and the project rested for a considerable time. In 1822, great exertions were again made to revive the company, and to acquire new information and new subscriptions; and, in the year 1823, acts were passed, by which subscriptions, to the amount of \$25,000, were obtained from the State of Delaware, \$50,000 from Maryland, and \$100,000 from Pennsylvania, and new private subscriptions were made to the amount of \$325,000.

And, as to the expediency of a Government becoming a stockholder in a corporation, experience has shown that it is highly beneficial, and attended with no inconvenience. The practice of the States is full proof of this. In many instances, they encourage spirited individuals, by creating corporations, and subscribing as stockholders.

Pennsylvania has repeatedly subscribed for stock in banks, bridges, and State roads; the result has been useful to such improvements and advantageous to the State.

In my introductory remarks it has been one

main object, to give a history of the proceedings concerning the canal, and in the conclusion of the little I have had to say, I come now to one consideration of the subject which I dread the most. It is the danger that amendments may be proposed, by even the friends of the general measure, to embrace other objects, and so to load the present bill as to cause a failure of the whole, without its being so designed. This has been the fate of the measure heretofore. I will, however, indulge the hope, that the public feeling which generally exists in favor of internal improvements, and the improved state of experience as to the practicability and utility of public works in this country, will induce honorable members to permit the question to be taken on this bill upon its own merits, and not to expose it to any unnecessary risk.

It is really distinguishable from any object that can be named, inasmuch as the work is partly executed, and as no further information is necessary, no State laws are to be obtained, and its national importance is so apparent that no one can deny it. If the General Government is seriously disposed to aid, in certain instances, the internal improvements of the country, no spot could be selected freer from objections, for a beginning.

I think I have good reason to anticipate a favorable result in this respect from the laudable disposition that prevailed in Congress at the last session, when the bills to improve the navigation of the Ohio and Mississippi Rivers were under discussion. No member, that I recollect, attempted to carry with those bills, other favorite objects of his own. They were fairly considered on their respective merits alone.

The object of this bill, it is true, lies near those I represent, but since I have had the honor of a seat here, I have been uniform in giving my support to the internal improvements of the country. I have, on no occasion, refused to vote for any measure of improvement, because it was not connected with something near home; and the same spirit appears to have animated the members generally, at the last session.

I have been induced to make the remarks which I have done, respecting any amendments to connect the bill with other objects, although a little out of place, because I have understood that, in this way, this interesting project had often been defeated.

In introducing this bill to the consideration of the committee, I have abstained from any remarks on the general subject of improving a country by canals, and will now only observe that, in very many instances, they have entirely changed the appearance of the country through which they pass, by giving to its interior parts, in a great degree, the advantages of coasts, and bringing the whole country into a sort of compactness that cannot be accomplished by any other means. They conquer the inconveniences that naturally exist between

the extreme parts of a nation, and, by the facilities which they always afford they excite industry, in a most surprising manner.

Our greatest difficulty is to begin, and that has been the case in most nations; and this seems strange to me, for, as soon as public works are executed, they are considered the highest blessings that can be bestowed on a country, and the authors of them go down to posterity with more lasting glory than could be attained by any other public acts. The credit now depends on the actual execution, the science on the subject being so well known.

Some imagine that the nation is too young. No opinion can be more fallacious. On this head, I was pleased with a remark of the Abbe de Pradt, on the Colonies. In speaking on the age of a nation, he says it does not depend on time, it is on the resources and population of the country—and I will add to his sensible remark, that it may depend also, in a degree, on the enterprising character of the people. Ten millions of people are capable of performing all the important interests of a nation. This ought not, on subjects of this description, to be considered a young nation.

The New York works are a complete and satisfactory answer to any objections made in respect to the age of the nation. We have ocular demonstration of the immense works that have been accomplished there in a period of seven or eight years; and I will ask, has any of the other concerns of the State or the nation been neglected on that account? It is true, that State is in debt for nearly the whole expenditure—but would any man in the State give up the canal to be free of the debt? Not one. Now, the General Government can do the same things on a still greater scale: and why should not the same results follow? In ten years, the whole face of this country might be changed. Gentlemen talk of the national debt—but what is a debt of eighty or ninety millions to such a country as this? Had the system of internal improvements been commenced long ago, the value of the country might have been doubled at this day—nor would it have involved the sacrifice of any other interests, to promote internal improvements, as the example of New York, already quoted, has plainly demonstrated. I sincerely hope, Mr. Chairman, that we shall now make a beginning. I am well convinced the spirit of the nation is on this subject in advance of Congress—and I am equally persuaded that, if a beginning is to be made, no spot could be selected freer from objections, than that in which the canal has been commenced, which it is the purpose of the present bill to aid.

The committee reported the bill without amendment, and the question being on ordering it to be engrossed for a third reading, Mr. COCKE called for the yeas and nays on that question, which were taken as follows:

YEAS.—Messrs. Adams, Alexander of Tennessee,

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Allen of Tennessee, Allison, Bartley, Beecher, Blair, Buckner, Cady, Call, Cambreleng, Campbell of Ohio, Cassedy, Collins, Condict, Cook, Cushman, Durfee, Dwight, Ellis, Foot of Connecticut, Forsyth, Forward, Gatlin, Gurley, Harris, Hemphill, Herkimer, Holcombe, Ingham, Isaacs, Johnson of Virginia, J. T. Johnson, F. Johnson, Kent, Kremer, Letcher, Little, Livingston, McArthur, McKean, McLane of Delaware, McLean of Ohio, Mallary, Martindale, Matlack, Mercer, Miller, Mitchell of Pennsylvania, Mitchell of Maryland, Moore of Kentucky, Neale, Newton, Owen, Patterson of Pennsylvania, Patterson of Ohio, Plumer of Pennsylvania, Reynolds, Sandford, Scott, Sharpe, Sloan, Wm. Smith, Standefer, Sterling, J. Stephenson, Stewart, Storrs, Swan, Thompson of Pennsylvania, Tomlinson, Udree, Vance of Ohio, Van Rensselaer, Vinton, Warfield, Wayne, Webster, Whittlesey, James Wilson, Wilson of Ohio, Wolf, Woods, and Wright—86.

NAYS.—Messrs. Alexander of Virginia, Archer, P. P. Barbour, Bassett, Bradley, Buck, Burleigh, Campbell of South Carolina, Carter, Carey, Clark, Cocke, Conner, Crafts, Craig, Crowninshield, Culpeper, Day, Dwinell, Eddy, Edwards of North Carolina, Findlay, Floyd, Foote of New York, Frost, Garrison, Gist, Govan, Hall, Hamilton, Harvey, Hayden, Herrick, Hobart, Hogeboom, Hooks, Jenkins, Kidder, Lathrop, Leftwich, Lincoln, Litchfield, Livermore, Locke, Long, Longfellow, McCoy, McDuffie, Mangum, Marvin, Matson, Morgan, Nelson, O'Brien, Olin, Reed, Richards, Rose, Ross, Saunders, Sibley, Arthur Smith, Spaight, A. Stevenson, Stoddard, Taliaferro, Tattall, Taylor, Ten Eyck, Thompson of Georgia, Tracy, Tucker of Virginia, Tucker of South Carolina, Tyson, Vance of North Carolina, Whipple, Whitman, Williams of New York, Williams of Virginia, Williams of North Carolina, Wilson of South Carolina, and Wood—83.

So the bill was ordered to be engrossed.

MONDAY, JANUARY 17.

National Road.

The House went into Committee of the Whole, on the bill to provide for the continuation of the Cumberland Road, Mr. STERLING in the chair.

The question being for filling the blank for an appropriation with 150,000 dollars,

Mr. CLAY, (Speaker,) rose, and observed, that, from his attachment to that system of internal policy, of which the measure now before the committee formed a part, he had entertained a wish to offer to their consideration some views in relation to it which had forcibly impressed his own mind; but had he anticipated the state of expectation which it would be needless for him to affect not to perceive, or that debilitated state in which he now appeared before the committee, he should have contented himself with giving his silent vote in favor of the bill.

The object proposed, he said, involved a question which had often been debated in that House, and the general views of which were already so familiar to the minds of those whom he addressed, that he despaired of adding any thing to that knowledge of it which they already possessed. Indeed, he considered the

views of policy which he held on this subject as having been vindicated and maintained by the votes of the House at the last session. Yet he would say thus much: that he considered the question, as to the existence and the exercise of a power in the General Government to carry into effect a system of internal improvements, as amounting to the question whether the union of these States should be preserved or not—a question which involved the dearest hopes and brightest prospects of our country. As to the opinion, that the carrying on of these improvements belonged to the States in their individual and separate character, it might as well be expected that the States should perform any other duty which appertained to the General Government. You have no more right, observed Mr. C., to ask the individual States to make internal improvements *for the general welfare*, than you have to ask them to make war for the general welfare, or to build fortifications for the general defence, because some of them may happen to have a peculiar local interest in either. They are no more bound to do any one of the duties which pertain to the General Government, than to do any other one of the duties which pertain to it. Sir, it is our province, not theirs. It is, indeed, true, that the interests of the whole and of one of the parts may be coincident, and sometimes to a very remarkable degree—nay, to such a degree as may induce a State government to undertake a duty which more properly belongs to Congress. But such cases are rare, and such an effect has seldom happened. One instance, indeed, may be pointed out—that of the great canal in the State of New York. When that State applied to this House for aid in her great and spirited undertaking, it was my opinion that she ought to receive it—and it is now my opinion that, for what she has advanced in the completion of that noble enterprise, she has at this hour a just claim upon the General Government. But cases of this kind always will be rare—it is vain to expect that any State will feel a sufficient interest in any object or improvement (unless such as are purely local in their character) as to induce her to make an appropriation of her individual resources for its accomplishment.

With these preliminary observations on the great policy of measures of the kind of that now proposed, he would go on to inquire in the first place, is the object in the present bill of sufficient magnitude to authorize an application to it of the resources of the nation? To answer this inquiry, the object must be considered, not as standing isolated and alone—but as constituting one link in the great chain of the internal improvement of the Union. What, said he, is the actual state of the facts? There now exists from the city of Baltimore to Wheeling, in the State of Virginia, an uninterrupted line of turnpike road, extending to a total distance of two hundred and seventy miles; and there also exists a like line of road from this city to

the same place, with the exception of one small gap between Montgomery Court House and Fredericktown. Taking its origin at the foot of the Alleghany Mountains, the Cumberland road extends to the eastern bank of the Ohio, a distance of *one hundred and thirty-five miles*. Of this distance eighty-five miles lie in Pennsylvania, thirty or thirty-five in Maryland, and the residue in Virginia—the entire work, from one end to the other, and through its whole extent, lying exclusively in the States east of the Ohio River. The proposition now presented to the committee is to extend this road from the west bank of that river to Zanesville, in the State of Ohio, a distance of *eighty miles*. If the proposition shall meet with the favor of Congress, the whole length of road from Baltimore to Zanesville will be 350 miles.

Mr. C. then remarked on the character of the country through which the contemplated road is to pass, which he described as containing a succession of hills, some of which might perhaps have been called mountains, but for the altitude of the neighboring Alleghanies—and which continue as far west as the Muskingum River, on the bank of which Zanesville is situated. There, or a little to the west of it, commences a level plain of an alluvial character, extending from the Muskingum to the Mississippi, a distance of four hundred and twenty miles.

The present proposition, Mr. C. said, was to be considered in reference, first, to what had been done, and second, to what remained to be done. The proposed part of the road must be viewed, first, in respect to one termination of the entire line which is at Cumberland, and then in respect to the other termination of it, which he trusted would one day be on the Missouri. It must also be viewed in reference to that branch of it, which he hoped, at no distant day, would pass through Kentucky and Tennessee to Natchez and New Orleans, intersecting the great road now proposed from the latter place to this city. It must be remembered, said he, that it is a part of a road which is to traverse nine States and two Territories; so that whether we look to the right or to the left, we find the interests of nine entire States and two Territories, all concentrated in the present design.

Here Mr. C. wished to be permitted to state one fact with which, perhaps, but few members of the committee were acquainted. A distinguished member of the other House had lately travelled in company with the delegate from Florida, now on this floor, over the very route which was contemplated in this bill for the road proposed. They had found it, though somewhat hilly, free from any mountainous obstructions, and abounding in all the materials which would be required for construction.

Mr. C. next proceeded to inquire, whether the object, such as he had now described it, was not justly entitled to be considered a national object? Look, said he, at the effect produced

upon the convenience of the whole country, from what has been already done. The usual space of time formerly required to go from Baltimore to Wheeling, was from eight to ten days—the time now occupied is three days. The effect of such a saving of time would readily be conceived. To this consideration might be added the advantage resulting from the investment of so much capital, and the expenditure of so much public money, in a region of country where both were so much needed. Settlements had been multiplied—buildings of all kinds erected—villages had sprung up as if by enchantment; and, to use the language of one of the gentlemen who had ably advocated the bill, the road resembled one continued street, almost the whole way from Cumberland to Wheeling. The effect had been a great addition to the value of property, and an important increase of the wealth of three States through which this great public work had been constructed.

It has been called, by some gentlemen, a Western road, but how could it be a Western road, when not one foot of it lay within any one of the Western States, but the entire road, in all its parts, lay wholly in the Eastern States? The direct benefit, and much that was collateral, was felt by the three Eastern States where the road lay; the only benefit to the Western States was a mere right of way. All they enjoyed in the road was the right to pass over it to visit their brethren in the East, and to come to this Metropolis to mingle their counsels with their fellow-citizens of the South and East—important benefits no doubt—but not such as ought to designate this road as a Western road. In fact, Mr. C. said, it was neither an Eastern nor a Western road, but partly the one and partly the other. The benefits derived from it were strictly mutual.

Mr. C. asked, if the United States were not under a positive obligation to extend this road? What was the history of this undertaking? It arose out of a compact between the United States and the State of Ohio, at the time that State was admitted into the Union, by which two per cent. of the net proceeds of the sales of the public lands was to be applied to the making of a road leading to the State of Ohio. A similar provision was also made in the compacts, by which Indiana, Illinois, Missouri, Mississippi, and, he believed, Alabama, were admitted as States. It had been contended by some gentlemen, that the construction of the Cumberland road was a fulfilment of this compact on the part of the United States. This, said Mr. C., I deny utterly. I grant, indeed, that it is a fulfilment of the compact with the State of Ohio. The United States covenanted to make a road leading to that State. They have done so; and Ohio has no right to demand that the road should be carried one foot further. But the case is entirely different with the States beyond Ohio. They have a right, under their respective compacts, to demand a

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road which shall terminate at their limits—a road which shall be brought *up to* the boundary line of those States respectively. It is very true, that Congress may begin the road wherever they please, but it must terminate *at* the State *to* which Congress has covenanted that the road shall lead.

Am I not, said Mr. CLAY, arguing a question which is too plain to be illustrated? Can it be said, that Government has made a road to Missouri, when it has made a road which nowhere approaches Missouri within 500 miles? or, that it has made a road to the other Western States, when it has made one to a point 250, 300, or 500 miles from them? Gentlemen say, that a road has been made in that direction. It might as well be said, that the making of Pennsylvania avenue, in this city, was a fulfilment of the contract, or that the Government might begin a road in the remotest part of the east, and end it there, provided it had a western direction. He repeated, Government was not bound to spend more than the two per cent. under the contract—but the road must end *at* the limit of the States with whom the compact was made.

And here, said Mr. C., let me ask my worthy friend from Mississippi, (Mr. RANKIN,) whether he would consider a road ending at Wheeling as a road to Mississippi, because it leads, though obliquely, toward that State? I am sure he would not. He would say Congress had fulfilled its bargain only when the road terminated at the Mississippi.

It has been said, that the provision which pledges the two per cent. fund of the several Western States for defraying the expense of the Cumberland road, had been inserted in all the former bills on that subject. I admit this, said Mr. C., but I should never have given my consent to its insertion, had I not thought that it was understood and agreed upon, as a part of the plan, that Congress should go on with the road, and carry it to all the States whose funds have been thus pledged.

On the question of the utility of the present undertaking, Mr. C. trusted he need say no more. He was happy, he said, to find that the worthy gentleman from Virginia, (Mr. P. P. BARBOUR,) who, to his great regret, could not, with his views of the constitution, support the bill, had declared, with that honorable frankness for which he was so eminently distinguished, that, apart from that view of the question, he should be in favor of the measure now proposed.

Mr. C. thought that the principle of preservation itself afforded sufficient argument in support of the measure now under consideration. He knew, indeed, that all questions which glanced at the union of the States, and the possibility of its severance, should be touched lightly, and with a cautious hand. But, if they were not to be discussed in that august assembly, where might they be? I, said Mr. CLAY, am not one of those who are in favor of covering our eyes, and concealing from ourselves the dangers

to which we may be exposed. Danger, of whatever kind, is best guarded against when it is deliberately contemplated, and fully understood. It is not to be averted by shutting our eyes and ears against the possibility of its approach. Happily, there exist among us many great and powerful principles of cohesion—a common origin—common language—a common law—common liberty—common recollection of national glory. But, asked Mr. C., have we not seen, in at least one instance in history, that all these have not been strong enough to prevent a total and lasting separation. And, though causes of the opposite kind may not in our case go all the length of producing this, yet they operate on every natural tendency to separation. That such tendencies exist, will not be denied by any candid and reflecting man, and they call on us to look far ahead, and to prevent, if possible, the disastrous evil which they threaten. Among the causes which go to increase the tendencies to separation, in such a system as ours, may be enumerated the lofty mountains which separate different parts of our country—the extended space over which our population and Government are spread, together with the different scenes to which commercial pursuits lead the citizens of different districts of the Union. Some of these are, indeed, beyond human control, but the effect of many of them may be, in a certain degree, corrected, if not wholly removed. The mountains may be cut through; we will teach the lofty Alleghany to bow its proud head to the interest and repose of our country. As to space and distance, they are terms wholly relative, and they have relation as much to the facility of intercourse as to actual distance of place. It will be the business of wise legislation, to correct the evils to which a sparse population exposes us. We have already seen what may be effected. A distance which formerly consumed nine days, (and in this I speak from personal knowledge, having passed the route in all conditions of the road,) can now be done in three. Wheeling is thus six days' travel nearer to Washington. So is St. Louis, so is every place west of Wheeling. If two places are twenty miles apart, and two other places are eighty miles asunder, and yet the distance between both occupies but one day, the two latter places, for every practical purpose, are as near to each other as the two former. And is it not the solemn duty of this House, to strengthen, by every means in its power, the principles of cohesion which bind us together—to perpetuate the union of these States, and to weaken and diminish, to the utmost of its ability, whatever has an opposite tendency? Can the imagination of man conceive a policy better calculated than that of which the present measure forms a part, to bring the opposite extremities of our country together—to bind its various parts to each other, and to multiply and strengthen the various and innumerable ties of commercial, social, and literary intercourse—in a word, to make of the various



and wide-spread population of these confederated Republics one united people? It is true, that no efforts of the Government can altogether remove one effect of our local situation, which causes one part of our country to find its commercial vent in one ocean, and another in another. Yet, even this may be in part corrected, and one great advantage attending the proposed national highway—the formation of a part of which is contemplated in the present bill—will be its effect upon the commerce of the country. And here, said Mr. C., let me state one fact. If, at this moment, the alternative were presented to me, of a total exclusion of my State from all use of the Mississippi River for commercial purposes, or the same exclusion from the Atlantic States, I would, without hesitation prefer the former, and I believe that the commerce, that now passes the mountains from the west, to seek its outlet on the Atlantic coast, is of greater value than that which passes down the Mississippi to the Gulf of Mexico—and this will be increasingly the case, if, as I hope, we are to have several different outlets like that which is now proposed. I beg gentlemen not to be alarmed. It is not my intention to ask for any further appropriations for this purpose, at least for some time to come, but we shall live, I hope, as a nation, as long as any other nation. I speak not of the works of one year, or of twenty years, but of those to which we may look forward, should our present state of peace continue. An appropriation of half a million of dollars annually would not be felt by a country like this, and yet it would effect every object which the friends of internal improvement propose to themselves or to this House.

But it may be said, Why should the General Government make a road for the State of Ohio? Sir, if this were a road for the benefit of Ohio, I would not ask an appropriation of a single dollar. Ohio has no such peculiar interest in this measure as would ever induce her to undertake to make this road. It is not a State road, but a national road, that is contemplated. It is not the duty of the State, it is your duty to make it. The route for the road passes through one of the poorest parts of the State of Ohio. Indeed, for sixty miles, it runs through as poor a country as I ever saw. Let me ask of the gentleman from Pennsylvania, Had this argument been used with respect to the Cumberland road, would Pennsylvania have made that part of the road which now passes through her territory? Or would Maryland or Virginia have made what passes through theirs? No, sir! So far from it, that I am well satisfied, if that road were destroyed to-morrow, a part of the population of these States would heartily rejoice. The resources of Ohio are scanty, and she will not do that which you ought to do. Ohio will certainly be benefited by this road, just as Pennsylvania, Virginia, and Maryland, are now benefited by the Cumberland road. But these incidental advantages, resulting to

Ohio, are not to deter you from performing your duty to the Union, any more than the incidental benefits of a fortification in any particular State should prevent the General Government from making the fortification.

With respect to the honorable member from South Carolina, (Mr. McDuffie,) whom I was delighted, on a former occasion, to find co-operating with the friends of internal improvement, I must say that my delight was only equalled by the regret I now feel at his opposition to the present bill. He tells us that the West is filled with emigrants from the Eastern States; that her inhabitants are but one part of the same family, spread on the eastern and western side of the mountains; that all the various and fond recollections which belong to the birth-place of these emigrants, constitute so many ties and safeguards to cement the common union. But, need I remind that gentleman, that other generations are hereafter to spring up—generations who will find the tombs of their ancestry, not upon the shores of the Atlantic, but in the valley of the Mississippi and the Ohio. On them no such ties will exert their power—no such recollections spread their healing influence. Is it not then the duty of the General Government to bind our population by other and more lasting ties? And, after all, what is it that is asked from Congress, not only at this session, but at all future sessions, for these eighty miles of the great National highway? Less than the cost of a single frigate—not twice the sum which will build those ten sloops of war which are now called for, and which I apprehend will be required for the defence of our commerce against the depredations of piracy—this is all that is asked. Yet we are told of the ravenous voracity of the West! Will Pennsylvania decline an appeal, not to her generosity, but to her justice? Is it fair—is it generous—is it just—after she has enjoyed the expenditure of more than a million of the public money, on the Cumberland road—after houses have sprung up, and villages been formed, and settlements multiplied upon her soil, in consequence of that expenditure—I ask, is it generous, to say, the moment the road leaves the limit of that territory, that she will oppose its farther progress? But, if neither justice nor generosity will prevail with her, let me remind her delegation of the interest of that State. What is this road but an extension of the road from Philadelphia to Pittsburg? And whither will its branches lead but to Bedford, to Carlisle, and downward, from thence, through all the neighboring towns? Sir, I do hope that the gentleman from Pennsylvania will not oppose this bill. I know, indeed, that there did once exist a prejudice against the Cumberland road, in one city of that State; but I feel satisfied that ere now the good sense which so eminently distinguishes that city, has prevailed against the prejudice arising from a local interest, by which, for a moment, it was clouded. May I not appeal to the whole House? We have a great trust—

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we have also a great duty to perform. Let us lend our hearty co-operation for the common good of those who sent us.

What shall we, from the West, say to our constituents when we return home, and they ask us, what have you done for the Cumberland road? Must we answer, "No money, no money?" If they can ask us what was done for the Delaware and Chesapeake canal, must we say, "O, there was some money for that—about twice the sum we asked for the Cumberland road!" Sir, we are men, and we have the feelings of men. But I will not longer detain the committee on an object so simple and a proposition so self-evident as the expediency of this measure. Let me rather anticipate your parental kindness—your paternal feelings, in promoting a design so intimately connected, I will say, with the safety and the best interests of our country.

The question was then taken on filling the blank with 150,000 dollars, and decided in the affirmative—ayes 96, noes 86.

The committee then rose and reported the bill; and the amendments made in Committee of the Whole, having been concurred in—

The question being about to be put on ordering the bill to be engrossed and read a third time, Mr. COOK demanded that it be taken by yeas and nays, and it was so ordered. The question was not taken, however, to-day, being postponed by an adjournment.

TUESDAY, JANUARY 18.

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The House passed to the order of the day, and took up the unfinished business of yesterday; which was the bill for the continuance of the Cumberland road.

The question then recurring on ordering the bill, as amended, to be engrossed for a third reading,

Mr. McDUFFIE, of S. C., rose, and said he wished to say a few words on this bill, both from the interest which he took in the success of a general system of internal improvements, and to show that his opposition to this bill did not involve him, in reference to his views of the general subject, in any inconsistency.

Of all the considerations in favor of a system of internal improvement, no member, he said, was more sensible than he was, and it was hardly necessary for him, he trusted, to state the fact to induce the House to believe it. But he thought that he could satisfy at least some portion of the House, that, if a due appreciation of the great national objects to be attained by the completion of a system of internal improvement, was with them as a motive of conduct, they ought carefully to abstain from appropriating any money for any object of that description, until, after a patient and deliberate investigation, a general system should be devised. And here, said he, let me make a remark, for the truth of which I appeal to the members from

every State in the Union which has embarked in a system of internal improvements, that, notwithstanding the obvious benefits which have resulted from it, it is a fact, even in those States in which internal improvement has been most successfully prosecuted, it has had to encounter the most violent opposition that could be waged against any measure. When the work is commenced, and whilst it is in progress, those who do not look to the result,—the great mass of the community—can hardly be brought to support it. Was it not a fact, he said, that the great canal of New York—that most honorable monument of public spirit, enterprise, and industry—would not that work have failed if the fund from which it was executed had not been previously pledged? If, then, a system of internal improvement by a State of great wealth and condensed population, cannot be prosecuted but with the utmost caution, and with something like a previous pledge, by an absolute investment of money, requiring the consent of all the branches of the Government to repeal it, he asked whether it would not be better for us, commencing such a system over so extensive a sphere, to act with double caution? We ought, said he, to look to the great whole of a system of internal improvement, and act upon the subject with reference to its ultimate completion. For, if we are to stop at any point in the execution, to break it off or to resume it according to the variation of public opinion upon its merits or expediency, we must act inefficiently and unsatisfactorily. We ought, therefore, on commencing it, to avail ourselves of those means most likely to ensure its final completion.

What then is the question now to be determined? The question is not, whether it be wise to continue this road. On that question, there is, I believe, no difference of opinion, except on the part of those who object to it on constitutional grounds. But, I ask, what great national consideration calls upon us to adopt this system now, rather than three years hence? Are we, by continuing this road, to preserve this Union? Yes, we are. But, without this road, will the Union be at an end in three years? What reason is there for alarm on that score, though this work may not be undertaken for five, six, or ten years to come? All those future evils which we are required to guard against by making this road, and similar works, are somewhat distant. If this road should not be commenced for ten years, the Union would not be dissolved by the delay. But I am not for postponing the work for ten years. I am for commencing it as soon as we have made our surveys—as soon as we have determined what shall be the general system established for the prosecution of these objects. As soon as we commence, sir, I am for going on as rapidly as the funds of the nation will allow. No one can be more anxious than I am that this work should not only be done, but done speedily. We shall accomplish it, however, by acting systematically on the general subject, sooner than by a partial appropriation,

without previous examination, tending to hazard the final success, and at least retard the completion of the work.

With regard to the arguments in favor of this particular road, they may be either national or partly national only. That this road might be a part of a system of internal improvement, Mr. McD. said he would readily admit. In that view, he should cheerfully support it whenever a general system should be established, and had no objection to its having priority in the execution of the parts of such a system. But, so far as national considerations called for it, there had been no argument to show why this road ought to be undertaken now, without those previous inquiries and investigations which must precede the establishment of a general system. In a word, said he, all the arguments that can be used in favor of undertaking this work now, are sectional arguments. It is not worth while to disguise it. If they are not, why are they urged from a particular part of the country? The whole nation does not call for the present undertaking of the work, but two, three, or four of the Western States. Mr. McD. here replied to the argument that the Western States are not to be considered as more interested in this road than some of the Eastern. It was an erroneous idea, he argued, that a road was only valuable, or most valuable, to the particular State through which it runs. The Cumberland road runs through three States which derive no advantage from it. The right of way over this road is its only value. A few individuals residing directly on the road may be benefited by its passing through their lands; but the great benefit is to those who reside beyond its two extremes. Are not the Western States particularly benefited by the Cumberland road? It is the Western States, and the city of Baltimore—the points to and from which the road passes, that are benefited by it, and not the States through which the road runs; and, regarded in this light, the continuation of that road would be a road for the benefit of the Western States, of Maryland, and a very small proportion of the State of Pennsylvania. And, what is the state of the fact as to the Western country and the United States with regard to the appropriations heretofore made for the purposes of internal improvement? Why, sir, with the exception of this road, and *other* public improvements in different parts of the Western country, the United States has never appropriated one cent, worth noticing, for internal improvement in any part of the United States. The idea which had been put forth, that the navies of the United States, or the other institutions for the defence of the United States, are to be regarded as improvements analogous to those of roads and canals, seemed to be founded on an entire misconception. Mr. McD. traced this argument to its results. We are told, said he, that commerce benefits the Atlantic States, and that wars for commerce are wars for the benefit of the Atlantic States. Because commerce is transacted in

the Atlantic cities, is it for the benefit of the States in which they are situated? Not more than the Cumberland road is for the benefit of the three States through which it passes. And, if we are to regard those only as benefited by any particular incident who are in contact with it, then the Atlantic cities only, and not the Atlantic States, are benefited by commerce. Is this argument correct? Certainly not. It is not those who prosecute commerce who alone are interested in it. For if it were, how far would its influence extend beyond the limits of our seaports? The man who lives a hundred miles from a seaport has no more interest in the commerce carried on there, than if he were a thousand miles distant. Sir, the back country of South Carolina has no more interest in commerce than every gentleman in the Western country has. Commerce, from its universal diffusion and influence, is exclusively national in its nature, benefiting equally every part of the country. Mr. McD. marked the further progress of the argument. We were told yesterday, said he, that the patriotism and devotion of the people of the Western country, in the last war, was not surpassed by that of any other portion of the people of the United States. Of the flood of honor which resulted from the late war, I have pleasure in acknowledging that the Western country was entitled to more than an equal portion. But, sir, had she no interest in the causes of that war? If we look at the public documents which belong to that day, we shall find that the blood which flowed from the savage tomahawk was one of the causes of that war. It was not a war for commerce merely. The outrages of the savages on our borders was one of the causes avowed for it, and not without foundation—for the agents of the adversary power were stimulating the Indians on our borders to hostility against our citizens, whose situation invited and received the attention of the Government. They were protected. All the military movements and operations on the north-western frontier were directed to the great object of protecting that frontier from the havoc and desolation of savage warfare. In addition, have we not, ever since the foundation of the Government, been prosecuting wars for the protection of our frontiers against Indian hostilities? Has it not cost more, during the times of general peace in Europe, for the protection of that frontier, than for that of the Atlantic frontier? The whole expense of the Navy, in those periods, will not be found to be greater than that of protecting the western frontier from the incursions of the Indians. What, indeed, is now the fact in regard to this nation? A large portion, say one-third of the Army of the United States, is at this moment permanently established on the western frontier, for the purpose of protecting it against the Indians. If we are to regard the expense of protecting a particular frontier of the country as exclusively incurred for the benefit of that frontier, all the middle and interior part of the Union, the heart of the Republic, has no

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interest in our defensive establishments, and all the appropriations for the defence of the frontier, east or west, are on their part gratuitous. Could I, residing far in the interior, remote from danger of foreign incursion, use this argument against measures necessary for defence? No, sir. In fact, Mr. McDuffie said, if any comparison were to be instituted between the expenditures for the protection of the West, and those for the protection of the Atlantic frontier, it would be found that the former involved more of national and patriotic feeling, than the latter. For, he asked, what do we of the Atlantic States get, in return for the expenditures for the protection of the frontier of the West? Nothing. What for the protection of the eastern frontier? Commerce. Interest, therefore, invited measures for the protection of the maritime frontier, whilst nothing but the most high and elevated considerations operated to influence the measures for the protection of the western frontier.

There was one topic alluded to in the course of the discussion, which, Mr. McDuffie said, was entitled to the most profound consideration. He referred to the distress upon the currency of the country, produced by the expenditure of the Government, in any part of the country, being less than the revenue raised in it. He acknowledged the truth of this observation, and expressed a doubt whether, if we had a system of direct taxation, operating equally on every part of the Union, the Government could, in the present state of things, exist under it. Take the State of Kentucky for example. How was her portion of the revenue of the General Government now paid? In the price of the articles of foreign growth or manufacture which they consume. That, he said, they could well bear, because they paid it in the currency of the State. But, suppose the same amount of money was to be raised by direct taxation, and it was to be received this year there, to be expended next year elsewhere. What would be the result of such a state of things? Fortunately, the actual operation is, under present circumstances, the reverse of this. We raise our revenue by imposts on importation from foreign countries, which are paid in the Atlantic cities. All the money raised there, or nearly all, is expended elsewhere, and much of it in the interior. So that, if any account be made of the drain of money, it is rather against the Atlantic States, than in their favor. If any State in the Union has a right to complain, said Mr. McDuffie, it is that which I represent. A considerable amount of the revenue of the U. States is raised from the goods imported into Charleston, and not one-tenth part of the revenue raised there is expended there, so that there is a constant drain upon that city, which produces the most injurious effects to its interests. The whole revenue of the country, he said, was derived from commerce, except the little derived from sales of the public lands, the full amount of which last, however, and probably more, was expended on the army, and other na-

tional establishments in the vicinities in which it was collected.

Mr. WENSTER, of Massachusetts, then rose and said that, as he was in favor of the bill, he should say a few words in explanation of the reasons which led him to vote for it. As to the question of power in this House to make appropriations for objects of internal improvement, he should at this time say nothing. When that question was so much agitated in 1816, he had made his opinions respecting it openly known: he was, of course, ready to change them whenever he could be brought to doubt the constitutional foundation on which that power rests.

At present, the question was a different one, inasmuch as the present bill might be passed without the assumption of any power different from what has been exercised by this House for these twenty years. The bill, it is true, carries the principle of former acts somewhat farther, but it does not alter the principle.

On this subject, as on all others, Mr. W. said he wished to bring to the discussion a right feeling, that is, a feeling truly national. It mattered nothing to him who was to be immediately benefited. *Tros Tyriusque*, whether an inhabitant of the banks of the Merrimack of New Hampshire, or the Merrimack of the Missouri, he cared not: provided he be a subject of our legislation he has claims, said Mr. W., on my impartial consideration. If he had been led, since the discussion of 1816, to alter his opinion on any part of the general subject then debated, it was that which respects an equal distribution of the public expenditures through the different parts of the Union, according to their population. He doubted, extremely, the propriety, and even the power of Congress to carry on legislation on the principle of balancing the local interests of different sections of the country. If the business of legislation has been committed to us at all, the whole subject is in our power, and under our discretion. He doubted whether Congress had power to adopt a system which should go on the professed principle of distributing the public moneys *pro rata*; having respect to the different portions of the Union merely in a numerical view of them. When Congress legislates at all, it must legislate for a whole, and not for twenty-four parts. The idea had been brought forward, as being calculated to prevent a merely local legislation; but it was, in truth, itself, a local idea. Such a system would rest on a foundation essentially vicious. When going into a system of improvement, the House has simply to inquire, Where is improvement most wanted? He cared not whether it was beyond the Alleghanies, or beyond the Missouri; wherever it was most needed, there it must first be made. He supposed the House had power to decide which of the various objects was most pressing; but he denied that it had the power to enter into the consideration of a principle of mere numerical calculation, in undertakings for

the public good. On the present subject, it was his opinion that the States who had been admitted under the stipulations which had been stated, had, in fairness, a right to expect the Government to proceed with this road.

Taking the different statutes together, it seemed to be holden out, that Government would make a road, leading to those States. Congress had acted again and again on this idea; and, he asked, Where was the difference between the present appropriation, and those which had been formerly granted for this same road? All that can be said is, that the Government has made advances on a fund which is incompetent to repay them, and so the present amounts to a direct grant. Well. Had not this been done before? The appropriations for the Cumberland road had, many of them, been made when it was known that that fund was inadequate. The case is no worse now. The degree only is different. The principle is the same; and he thought that the Western States might fairly expect this object to be effected, on the ground of their several contracts. The next question was, is this a fit object for which to appropriate? Gentlemen say it is not a national object. But he knew of no work equally beneficial to all the twenty-four States. What, asked Mr. WEBSTER, is a national object? Is nothing to be so denominated except what benefits every part of the United States? Congress last year voted a sum to improve certain harbors on Lake Erie. Was this of any benefit to Alabama or New Orleans? They had appropriated money for the repairs of Plymouth Beach: could this be any benefit to the citizens of Indiana? Works surely may be denominated national, which are of extensive importance, although the benefit may not be strictly universal. The fortifications, for instance, which had been erected on the Chesapeake, are national only because many have an interest in it. The degree of interest in these works between those who lived on the shores of the Chesapeake and the shores of Lake Michigan, was so widely different, that the latter may, in comparison, be said to have no interest in them. Yet, certainly, those fortifications were a fit subject of appropriation, and it was the duty of Congress to erect them.

With respect to the present road, he asked how did the concern of the General Government in it begin? He presumed the origin of that concern was to be found in the connection of Government with its great territory of public lands. This was the idea out of which grew the reservation of the two per cent. fund. It was intended, doubtless, as an inducement to the settlement of the public lands, and none, surely, can doubt that Government may rightfully hold out considerations calculated to bring the public lands to a better market. The reason for making the road is still the same. Those lands are still in market, and every rod which is added to this road, increases the value, and is calculated to raise the price of those lands.

Another consideration was, the great accommodation which such a line of road would furnish to all the Western States. With respect to those States, the object was strictly a general one. Let me ask, said Mr. W., if Government were about to erect a fort or an arsenal, or to build ships of war, and it was possible that any of these objects would require so small a sum as that now asked for, whether anybody would then hesitate? If, then, the object was legitimate, if it was useful to all our citizens, and especially so to those who now ask it, might not Congress lawfully make it? As to the incidental advantages accruing from the expenditure of so much of the public money as was now proposed to be appropriated, he was confident they had been overrated. The expenditure of 150,000 dollars could be no great boon to any of the States. For his own part, he felt glad that this money was to be laid out beyond the mountains. He did not hesitate to avow that he should be yet more glad could more of the public money be expended there. Such were his feelings whether right or wrong, and such his views, whether correct or erroneous.

And here he would state what he conceived to be the true situation of that part of the Union. The people he considered as being substantially rich, yet, having no markets, they were without the means of converting their riches to many desirable purposes of common life. And, in such a situation, the expenditure of comparatively a small sum of money might do much in promoting the comfort of the people. There could be no doubt, if gentlemen looked at the money received into the treasury from the sale of the public lands to the West, and then looked to the whole amount expended by Government, even including the whole of what was laid out for the army, the latter must be allowed to be very inconsiderable, and there must be a constant drain of money from the West to pay for the public lands. It might, indeed, be said, that this was no more than the reflux of capital which had previously gone over the mountains. Be it so. Still, its practical effect was to produce inconvenience, if not distress, by absorbing the money of the people. It was as true of the West as of all other parts of the country, that the consumer pays the tax. The public revenue was not raised in Boston, or New York, or Charleston. The West paid as much of that revenue as the East, in proportion to its consumption; nay, on a strict calculation, something more. They pay the tax, and a profit on transportation. True, indeed, the money was collected in the custom-house, yet it was first paid where the imported articles were consumed. It could not be paid in the seaports, if it had not been first received in the interior. Some gentlemen say we must wait till a system is formed—that is, some system of internal improvement, so equal in its bearings, and so satisfactory in its details, that all shall agree in adopting it. He feared if gen-

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lemen waited till then, they would have to wait till they grew very old. He suspected that few of those who heard him would travel over the roads or sail upon the canals constructed after the adoption of the system. How long would it take merely to make the surveys for such a system? Was any man to be found bold enough to undertake to sketch out a system of internal improvements extending for twenty years to come? He would venture to say that no one man could form a plan in which he could get five others to agree. The thing was impracticable—and impracticable for this reason, that our entire condition was merely in a process of development. The country was changing every day and every hour—new views were continually presenting themselves—new wants were continually discovered—new resources were continually unfolding themselves—new connections were every day taking place—individuals were doing much—States were doing much—and he was satisfied that, if Congress was never to act on individual cases, but only on a universal system, it would never act at all.

This road was wanted—it was wanted now—it was wanted more now than it would be to-morrow; and the expense of making it to-day would be no more than of making it to-morrow. In the settlement of a new country, roads were all-important. The sooner they were opened the greater was their value and importance to the settlers. Ought not the road, then, if it is to be made at all, to be made now?

Mr. STEWART, of Pennsylvania, rose in support of the bill. He regretted to find the gentleman from South Carolina, (Mr. McDUFFIE,) opposed to this measure, from whose talent the friends of the general system had much to hope. With the views of that gentleman in relation to a general system, both at this session and the last, he fully concurred. He regretted now to find that that gentleman, and others friendly to the power and the policy of making internal improvements, thought that nothing should be done until the entire extinction of the national debt, when we should enter on the general system proposed. In this he entirely differed. After applying ten millions a year to the extinguishment of the national debt, we have an annual surplus of at least three millions of dollars, making no allowance for a certain increase of revenue and diminution of expenditure. This surplus he would employ in internal improvements. During the present year, upwards of sixteen millions had been applied to the national debt; near five millions had been paid for Florida, leaving still a balance in the treasury of more than four and a half millions. During the current year, after applying about twelve millions to the public debt, and paying all the other expenditures required, there will remain a balance of about three and a fourth millions of dollars in the treasury. By applying but ten millions annually, the amount of the existing sinking fund, the whole of the national

debt would be extinguished in about eight years, except the seven millions of United States bank stock, and the three per cents. which were payable at the pleasure of the Government. We shall then find ourselves with an annual surplus of from thirteen to fifteen millions of dollars, with which gentlemen would commence the grand system. And how are you then, Mr. S. inquired, to expend your thirteen millions a-year? Where will you find laborers? Where will you find engineers, *practical* men to superintend your numerous works? What will be the effect of throwing suddenly into circulation thirteen millions a year? It will produce an unnatural, feverish, and unwholesome circulation in the body politic. It will have the effect of another spawn, another litter of banks upon the community. It will raise the price of labor in an extravagant degree. It will require more than twice the sum to do the same work. Expend thirteen millions a year, and, in less than three years, the price of labor, and every thing else, almost, will be more than doubled.

The gentleman from South Carolina, (Mr. McDUFFIE,) has contended that the West has been provided for; that they have had their full share; that the two per cent. fund has been expended on the Cumberland road. It was true, two per cent. on the sales of a portion of the public lands had been expended on the Cumberland road—and, if *every* cent, instead of *two* per cent. had been expended in the West, he contended the West would still have just claims unsatisfied. Since the organization of the Government, you have expended more than 600 millions of dollars, of which the West paid more than their equal share—and how much of this immense sum had gone to the West? Not ten millions—not one-sixtieth part.

In the last twenty years you have expended more than 470 millions—and how much of it has crossed the Alleghany? Not a fiftieth part of it—not eight millions, excluding the expenditures of the late war. He had said the West had more than their proportion of the revenue—he could demonstrate it. The revenues of the Government are derived from two sources—the *customs* and *public lands*. The customs, all admitted, were paid equally by the consumers of imported goods; of course, the West paid of the customs their full proportion. But, how is it in relation to the other source of revenue, the public lands? This was derived almost exclusively from the West; it was paid by those who purchased and improved the immense valley of the Mississippi, for which they have paid into your public exchequer more than sixty millions of dollars. Yet, we are gravely told, they have had their share. Where is it? Where has it been expended? Let the gentleman point to any expenditures of money in the West. Where are their navies, their ships? Where their great forts and fortifications? Where the immense expenditures for lights, buoys, &c., to protect and facilitate their vast

internal trade? None; none. But, say gentlemen, we have done more than we were bound by our compact to do for the West; we have expended more than the two per cent. on the Cumberland road. The Cumberland road was not to be charged to the West; there is not a foot, not an inch of it in any Western State; it commences in Maryland and terminates in Virginia. But have the East no interest in the extension of this road? Will it not enhance the value of your public lands, bring them more rapidly into market, and facilitate their settlement?

Mr. Wood, of New York, then rose and said, that he was not now going to enter into any constitutional discussion, but merely to appeal to the generosity of the friends of the bill, by asking them to put it on a footing where those who differ from them on the constitutional question can agree with them in its support. If they will so modify the bill as to put the construction of this road under the superintendency of the Legislature of Ohio, I will agree in its support. Great waste must always occur where this is not done—I have authority in saying, that fully one-third of the money expended on the Cumberland road—in support of this assertion, Mr. W. referred to a book lately published by Major Long, which makes in effect, if not in terms, the same declaration.) If the gentleman will strike out the twenty per cent. in the amendment yesterday offered by the gentleman from Pennsylvania, (Mr. BRECK,) and insert seventy-five per cent., I will agree to vote for it. It will then remove the constitutional scruples, by giving the local superintendence to the local authority. The want of such superintendence was the great error in respect to the Cumberland road. There was no preservative authority—no tolls—no repairs—but the road was suffered gradually to go to ruin, and Congress will soon have to make appropriations to repair that road. The plan now proposed avoids these evils; and, if it is adopted, I (said Mr. Wood) will vote for this bill; in its present form I must vote against it.

Mr. CAMBRELENG, of New York, differed from the gentleman who had preceded him, as to the operation and influence of national expenditures. It was in his view immaterial whether they were upon the ocean or the land, their beneficial influence was felt throughout the Union. It was an error to suppose that our expenditures for our commerce, navy, &c., were for the exclusive benefit of the Atlantic States. The beneficial influence of every expenditure of this kind would reach even the confines of Mexico, and the remotest hamlet on the Missouri or Mississippi, by enlarging the market for all our productions. On the other hand, it was equally an error to believe that the Atlantic States derived no benefit from our national expenditures beyond the mountains; every such expenditure would spread its influence to our Atlantic borders, and though not everywhere in an equal degree, through every part of the

Union. He had therefore heard, and not without surprise, the question argued, as if the benefits of a road or canal were limited to the particular country or State through which they might pass. The advantages enjoyed by the State where the work may have been executed, were unquestionably great, but greater still were the ultimate advantages of the interior whose productions were destined to pass through this channel to market. Take, for example, the Erie canal—a work which would do honor to any country—however important were the benefits which that great work had bestowed upon the State which he had the honor in part to represent here, still more important were the advantages to the interior. The people of New York, it is true, enjoy a market for their own productions; but they are, besides, the agents of the North and the West, whose productions are increasing in value, and are transmitted through this channel. It is impossible to measure the benefit which this canal must hereafter bestow on our interior country, when we look at its vast extent, and reflect that its productions are annually increasing. He, therefore, considered the location of a great work of this character not as the principal theatre of its benefits. So with the Cumberland road; its advantages were chiefly and permanently to be felt in that country beyond it, whose productions reach a market from which they had been previously excluded.

Gentlemen seemed to think that New York had great complaints to make against this Government for rejecting its applications for assistance. Mr. C. thought they greatly misunderstood the sentiment of his constituents, and of the people of the State of New York. Whatever regret they might have felt when the Federal Government refused its incidental aid in executing their canal, it was to them now a matter of congratulation, that, by this refusal, their State, aided by its own resources alone, had commenced and executed the most magnificent work of this kind in our country, and one probably equal to any this Government will ever execute. He took the occasion thus to speak of this great work, because he had been one of those who thought it premature. He would frankly confess, (as he should always do when he found himself wrong,) that he had calculated erroneously. He was gratified to find that the result had realized even more than the most sanguine anticipations of its friends, and that it had given an impulse to almost every work of the kind in the Union. The people of New York now rejoice that the Federal Government rejected their petitions, and deprived itself of a share in this great work, and they are too sensible of the advantages they enjoy, to deny, on that account, to the General Government, the exercise of all its constitutional powers in the execution of similar works connected with national purposes.

Finally, the question was then taken, by yeas and nays, and decided as follows:

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**YEAS.**—Messrs. Alexander of Tennessee, Allen of Tennessee, Allison, Baylies, J. S. Barbour, Bartley, Beecher, Blair, Bradley, Breck, Brent, Burleigh, Call, Cambreleng, Campbell of Ohio, Clark, Cook, Crowninshield, Cushman, Durfee, Dwight, Ellis, Farrelly, Forward, Fuller, Gazley, Gurley, Hayden, Hemphill, Henry, Holcombe, Houston, Ingham, Isaacks, Jennings, Johnson of Virginia, J. T. Johnson, F. Johnson, Kent, Kremer, Lawrence, Lee, Letcher, Little, Livingston, Locke, McArthur, McKee, McKim, McLane of Delaware, McLean of Ohio, Mallary, Martindale, Mercer, Metcalf, Miller, Mitchell of Maryland, Moore of Kentucky, Moore of Alabama, Neale, Newton, Owen, Patterson of Pennsylvania, Patterson of Ohio, Plumer of N. H., Poinsett, Reed, Reynolds, Rose, Sandford, Sloane, William Smith, Standefer, J. Stephenson, Stewart, Storrs, Test, Thompson of Kentucky, Tomlinson, Trimble, Udree, Vance of Ohio, Vinton, Wayne, Webster, Whittlesey, White, Wickliffe, James Wilson, Henry Wilson, Wilson of Ohio, Wolfe, Woods, and Wright.—93.

**NAYS.**—Messrs. Alexander of Virginia, Allen of Massachusetts, Bailey, Barber of Connecticut, P. P. Barbour, Bassett, Buchanan, Buck, Campbell of S. C., Carter, Carey, Cocke, Collins, Conner, Crafts, Craig, Culpeper, Day, Dwinell, Eddy, Edwards of N. C., Findlay, Foot of Conn., Foote of N. Y., Frost, Garrison, Gatlin, Gist, Govan, Hamilton, Harris, Harvey, Herkimer, Hogeboom, Hooks, Jenkins, Lathrop, Leftwich, Lincoln, Litchfield, Livermore, Long, Longfellow, McCoy, McDuffie, Mangum, Matlack, Mitchell of Penn., Morgan, O'Brien, Olin, Plumer of Pennsylvania, Randolph, Rankin, Richards, Saunders, Sharpe, Sibley, Arthur Smith, Alexander Smyth, Spaight, Sterling, A. Stevenson, Stoddard, Swan, Taliaferro, Tattnall, Taylor, Ten Eyck, Thompson of Pennsylvania, Thompson of Georgia, Tucker of Virginia, Tucker of S. C., Tyson, Vance of N. C., Whipple, Whitman, Williams of N. Y., Williams of Virginia, Williams of N. C., Wilson of S. C., and Wood.—82.

So the bill was ordered to be engrossed for a third reading.

WEDNESDAY, January 19.

*Niagara Sufferers.*

The House passed to the order of the day, which was the third reading of the bill "further to amend the act authorizing the payment for property lost, captured, or destroyed, by the enemy whilst in the service of the United States, and for other purposes."

The bill was accordingly read a third time, and the question being, "Shall this bill pass?"

Mr. VANCE, of Ohio, rose, and said, that before the question was taken, he wished for the reading of one of the documents which had been received from the Departments, showing the amount of moneys which had been already paid for losses on the Niagara frontier. He was persuaded that, on this subject, a mistaken idea was still entertained by many gentlemen who supposed that the \$500,000 and upwards, awarded under the act of 1816, had all been paid for the buildings destroyed on that frontier. The several parts which made up that sum, had now been separated, and it would ap-

pear that, instead of \$500,000, there had been paid to these unfortunate claimants on that frontier, who had suffered more in the last war than the whole of the rest of the Union, but \$64,000.

The question was then taken by yeas and nays, as follows:

**YEAS.**—Messrs. Adams, Alexander of Tennessee, Allen of Tennessee, Allison, Bailey, Baylies, J. S. Barbour, Bartlett, Bartley, Beecher, Bradley, Breck, Brent, Burleigh, Cady, Call, Cambreleng, Campbell of Ohio, Cassedy, Clark, Collins, Cook, Craig, Crowninshield, Culpeper, Cushman, Day, Dwinell, Dwight, Farrelly, Findlay, Foote of N. Y., Forward, Frost, Fuller, Gazley, Gurley, Hamilton, Harris, Harvey, Hayden, Hemphill, Henry, Herkimer, Hogeboom, Holcombe, Houston, Isaacks, Jenkins, Jennings, Johnson of Va., J. T. Johnson, Kent, Kidder, Kremer, Lawrence, Lee, Lincoln, Litchfield, Livingston, Locke, McArthur, McKean, McKee, McLane of Delaware, McLean of Ohio, Mallary, Martindale, Marvin, Miller, Mitchell of Maryland, Moore of Kentucky, Moore of Alabama, Morgan, Neale, Newton, Olin, Owen, Patterson of Ohio, Plumer of N. H., Plumer of Pennsylvania, Reynolds, Richards, Rose, Ross, Saunders, Scott, Sharpe, Sibley, Sloane, Sterling, A. Stevenson, J. Stephenson, Stewart, Storrs, Taliaferro, Taylor, Ten Eyck, Test, Thompson of Pennsylvania, Thompson of Kentucky, Tomlinson, Tracy, Trimble, Tucker of Virginia, Tyson, Udree, Vance of Ohio, Van Rensselaer, Vinton, Wayne, Webster, Whipple, Whittlesey, White, Williams of N. Y., James Wilson, Henry Wilson, Wilson of Ohio, Wolfe, Wood, and Woods.—123.

**NAYS.**—Messrs. Abbot, Alexander of Virginia, Allen of Massachusetts, Archer, Barber of Connecticut, P. P. Barbour, Bassett, Blair, Buchanan, Buck, Buckner, Campbell of S. C., Carter, Cary, Condict, Conner, Crafts, Cuthbert, Durfee, Eddy, Edwards of N. C., Floyd, Foot of Connecticut, Forsyth, Garrison, Gatlin, Gist, Govan, Hobart, Hooks, F. Johnson, Lathrop, Leftwich, Letcher, Little, Long, Longfellow, McCoy, McDuffie, McKim, Mangum, Matlack, Matson, Mercer, Metcalf, Mitchell of Pennsylvania, O'Brien, Outlaw, Patterson of Pennsylvania, Poinsett, Randolph, Rankin, Sandford, Arthur Smith, William Smith, Spaight, Standefer, Stoddard, Swan, Tattnall, Thompson of Georgia, Tucker of S. C., Vance of N. C., Whitman, Wickliffe, Williams of Virginia, Williams of N. C., Wilson of S. C., and Wright.—69.

So the bill was passed and sent to the Senate for concurrence.

THURSDAY, January 20.

*Chesapeake and Delaware Canal.*

The bill to authorize a subscription to the stock of the Chesapeake and Delaware Canal being on its third reading—

Mr. HAMILTON, in rising, remarked, that, whilst he returned to the House his most respectful thanks for the indulgence which they granted him yesterday, by an adjournment, which enabled him to address them to-day, he felt it due to himself to say, when, on the last evening, he submitted a motion to adjourn, that he had been influenced exclusively by a wish



not to intrude, upon a fatigued and exhausted audience, remarks which he knew could have no attractions to arouse it from an apathy consequent on a protracted attention to the business of the morning. He declared, without feeling any strong wish to make proselytes to his views of the subject under consideration, he nevertheless desired, before he recorded his vote, to assign the reasons which induced him to give that vote in the negative, on a proposition which had seemingly so much to recommend it. He was more particularly solicitous for the indulgence of this privilege, because it appeared to the understanding of some gentlemen, that those who voted for the bill, technically called the survey bill, at the last session, were pledged on the great question of internal improvement; and that they could not, without some apparent inconsistency at least, refrain from supporting almost every measure which might have for its object the construction of a canal or road. That, having been thus initiated into the faith, that a ready concurrence in all expenditures which belong to the exercise of power, followed as indispensable and legitimate forms of worship. Now, for one, he had no hesitation in saying that the survey bill could have been voted for even by those who entertained the strongest conviction that no constitutional power resides in this Government to construct works of internal improvement—for the proposition really submitted, on the passage of that bill, was, whether, by maps and charts, we should obtain a statistical and topographical knowledge of that country, whose interests and prosperity are confided to our care? But his opinions he had no hesitation of avowing in relation to this subject, which were most unequivocally—that Congress had the right to construct roads and canals, under the military power, as well as the post roads and post office power given to it by the constitution. If we have not the power to construct either a road or canal, for the transportation of troops or munitions of war, I do not see, said Mr. H., whence we derive our power to build a fort or arsenal; for, in reference to the exigencies of war, they may be both of equivalent necessity: for it is altogether true, in a military view, a canal or a road may, *in effect*, perform the same offices, and tend to the same object, to wit: by a concentration of force on a given point of defence. And further, the right to make a post road, *if necessary*, is so inevitable an incident of the power “to establish a post road,” that it was impossible to distinguish between two things which seemed, in all respects, identical propositions. For, to make a post road may be as necessary, convenient, and profitable, for the transmission of the mail, as it is for the Government to purchase the leather which forms the portmanteau of the mail itself: and yet we have precisely as little expressed, and as much implied, power, for the construction of the one as for the purchase of the other. But, Mr. H. said, he would

console the House by a most explicit declaration, that it was not his intention to go into a refined or abstract discussion of this question, on which so much ingenuity had been displayed. He confessed that this species of metaphysical dialectics had few charms for him, because he had no capacity for them—that the taper of common sense burnt with a light sufficiently steady to guide his humble steps—that a sound, plain, and familiar interpretation of an instrument, intended more for practical good than theoretic refinement and subtlety, suited his purpose. Besides, if he wandered far into these abstractions, he dreaded lest he might plunge into that “Serbonian Bog,” which lies on that narrow isthmus which connects the extremes of this question, where he would be left, notwithstanding the chivalry of his friends, (from Virginia,) to perish as an abominable and irreclaimable heretic.

Mr H. said, that whilst these two sources of delegated authority, to which he had referred, furnished the requisite power, he was happy to perceive, by their very nature and character, they also furnished a limitation to the exercise of the power, and confined its application exclusively “to national objects.” For nothing which has a just reference to the defence of this Union, or the communication of information, commercial and political, and social intercourse, can be otherwise than “national” in its character and tendency. With this view of the subject, he would support, whenever recommended by justice and expediency, any works of national utility, which could be brought under a direct, and immediate, and natural relation to one or the other of these powers, which he believed confided to the General Government. In making this declaration, it would be perceived, that he rejected the right to construct works of internal improvement, under the broad power to appropriate money “to promote the general welfare,” or “to regulate commerce between the States” the first of which he thought might be made to imply any or every thing which a capricious interpretation was capable of supplying, and that the last was as indefinite and as various as the principle of trade itself, and could be stretched almost to as many objects as there are subjects of barter and commerce.

Mr. H. observed, with these few remarks on the abstract question, he should now proceed, with the utmost brevity, to state why he should vote against the measure for which some gentlemen had indicated such an uncompromising zeal. He was not, for one, disposed to vote for any work, until, by an act of specific legislation, it could be made apparent what was to be the outline of the scheme of internal improvements; that there might be a strong guarantee afforded for the most defenceless portions of this Union, having the smallest representation on this floor, that they should participate in the benefits of a system having for its object the general defence of the whole country. Under

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the solemn faith of legislation, he wished some certain stipulation that those portions of the country most speedily requiring these improvements, and least able to accomplish them, should claim our first attention. He believed if this pledge, detailing the works in their order of progression, in reference to their relative utility, could not be obtained, that, without waiting for scientific estimates or surveys, four or five large States might confederate and keep the benefit of the system to themselves, under that "solemn plausibility" of the public good, which self-interest so freely supplies whenever the pretext is at all necessary. Besides, if the question submitted to the House was, where ought we to begin? he should think the answer ought to be decisive—not, surely, between the Delaware and Chesapeake; because, with the exception of certain portions of our Union, more especially in New England, he thought this section of the country decidedly the strongest and most defensible, from its dense population and already easy communication, and if our resources were to be applied at once, let them be carried to some section now comparatively weak, and most requiring interior communication. It is perhaps worthy of inquiry, whether it is to the interest of the Government to construct roads and canals in those portions of the Union where, in the progress of wealth and population, they will certainly be accomplished; for that works, executed by private capital and individual enterprise, will at once be more judiciously executed and more beneficially supervised, does not admit of a question; and to this it is no answer to say, that the United States, subscribing as a stockholder, has its interest superintended; for, for just so much as may be the capital of the United States employed in this way, will be so much of the capital of the country unrepresented by the ever-watchful instinct and sympathy of private interest. It is perfectly obvious, that the Chesapeake and Delaware Canal is precisely one of those works which *must* and *will* be accomplished without the aid of Government, by the natural progress of wealth and population, and the probable profit which will be afforded to the investment of capital under the guidance of those who can best direct it—its owners.

Mr. H. said he did not think that there was a good husbandry, or application, of the means of Government, to begin precisely at the point where the work could and would be accomplished, without our aid, when so many important sections of our country, infinitely more vulnerable in a military point of view, could not be rendered defensible without it. It is indisputably true, that there were many portions of the Union where, for the construction of roads and canals, the General Government would not be under the necessity of expending a farthing, even in reference to those routes which would be essential in time of war for the transportation of troops and military supplies, because private interest would make them com-

plete and ready at our hands. Now, unless it can be shown that the resources of the country, for the next fifty years, will be more than adequate for the construction of those works necessary to the security (by internal communication) of those sections of our common Union, where they can only be executed by our entire aid; it is surely a question worthy of consideration, whether we are not beginning, not only in the wrong place, but doing that which, long before the most unimportant of our distant works can be accomplished, will be a superfluous act of munificence. For, he would undertake to aver, as certain as there was an increase of the wealth and population of Philadelphia and Baltimore, just as certainly would the projected canal be completed without our aid. And he believed this aid could be withheld without the slightest injustice to a single individual in this country: for what it is the interest of communities to do, they will do in the natural progress of events, without the pampering of Government, which often has an unpromising effect.

Mr. H. said that in his humble view of the subject, he thought the importance of the proposed canal, in a military aspect, was greatly overrated. He did not hold so absurd an opinion, as to say that the water communication contemplated would be of no service at certain exigencies, for the transportation of the heavy munitions of war. But the neck of land over which the canal is to pass, is too narrow, and is now furrowed by a turnpike road too good, to render the prompt and efficient passage of troops with their light munitions, at all uncertain or embarrassed. He would undertake to say this, that a body of twenty-five thousand men, with the necessary *material* for going into action on this side of the Chesapeake, could be marched on the turnpike as expeditiously as they could be transported by water on the canal, if they had to change their boats on their arrival at the Chesapeake. None but those who have witnessed it, can form any idea of the time consumed by the embarkation and debarkation of troops. The great utility of this canal, in a national point of view, would be its adaptation to the passage of vessels of war from the Delaware to the Chesapeake, without the necessity of doubling the Capes, in cases of concerted rendezvous at Hampton Roads. It does not appear, but precisely the reverse, that it is the object of the company so to construct it at present, and if completed merely for boat or sloop navigation, it is not very probable it ever will be so adopted, except on terms which would throw the entire burden on the Government, and at a cost which might infinitely transcend the value of the object, as valuable as it might be.

Mr. H. said he objected to the subscription of the United States in the stock of the company, on another ground, which was, that there would not probably be a single turnpike or canal company in the United States, which

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would not make a similar appeal under the benefit of this precedent, or, that would not perhaps have equal claims on your liberality; and, if such applicants did not succeed, it would be the result, he feared, rather of the weakness of the political combination which could be brought to bear on their applications, than on the intrinsic justice of their claims. The State which I have the honor to represent on this floor, is now engaged with an enterprise worthy of herself, and on her own resources, in two canals, both of which are more essential to the defence of the seacoast of three States in this Union than any two works that could well be imagined. He alluded to the Catawba canal, which opened a communication with the populous district of North Carolina at a distance of two hundred and fifty or three hundred miles from the ocean, and the Saluda canal, which afforded a similar facility of drawing military resources from Tennessee. Yet, Mr. H. said, he questioned whether, if either himself, or some one of his colleagues, better able to support it than himself, had introduced a proposition that this Government should lend the State of South Carolina three hundred and fifty thousand dollars on a contingent payment of interest when the *works might be profitable*, to accomplish them, it would have obtained any thing more than the cold ceremony of a reference to some committee where the measure would die a natural death, as a matter of course. Yet, he could demonstrate, in relation to the military exigencies of the country, that these canals were vastly more essential to its defence than the one for the benefit of which we are called upon to contribute.

If a system, having reference exclusively "to national objects" is reported to this House in the progress of four years, it will not be necessary to appropriate the whole amount of their cost at once, but by a judicious apportionment of our means, beginning with those of the first necessity, we might lay the foundation to some of those works which would form "a tower of strength" to us in war, as well as a memorial of our successful industry in peace, and at once afford an effective guarantee to all the portions of this vast Union, that their national interests would be considered. Now, said Mr. H., in beginning with the Delaware and Chesapeake canal, we are beginning where, as he had before said, our aid is least wanted, and where the work can and will be accomplished without it. Surely, if we are at once to commence the construction of canals, the communication between the Gulf of Mexico and the St. John's, the communication between the Cape Fear River and the Waccamaw, are points of far greater importance in reference to the exigencies of defence, than the point to which it is proposed you shall apply your means. The one comprises a section of country of sparse population, and extensive seacoast, where munitions of war must, in all probability, be transported on a sudden exigency. The last is a point in

the heart of a population full and overflowing, and surrounded by all the materials of defence.

Mr. McLANE, of Delaware, rose and said that, as the honorable member who had just taken his seat, (Mr. HAMILTON, of South Carolina,) had professed his object to be not so much to make proselytes as to justify his own vote to himself, there was no imperious necessity for the friends of the bill to prolong the discussion, especially as he felt no desire to deprive the gentleman of any consolation he might derive from the reasons he had assigned, of which, in the fullest extent, he thought the gentleman would stand in great need. And yet, said Mr. McL., the relation in which the State I represent is placed, to the work proposed to be aided by this bill, makes it proper that I should briefly reply to the arguments submitted by the gentleman from South Carolina. Mr. McL. said the danger he had always apprehended in regard to these subjects had now arisen. He had never believed the constitutional objections to be the greatest difficulties; these were matters of construction arising out of the words and spirit of the constitution, which could be combated by argument and sound reasoning, by which the judgments of men could be addressed and convinced. This task had been performed; in this House, and in the nation, the doctrine had prevailed. Not only had public opinion yielded to the powers of the General Government to engage in internal improvements of a national character, but had even outstript and gone ahead of the notions maintained here. But now, said Mr. McLANE, after we have gained the victory over constitutional scruples, we are met with precisely the obstacles most to be apprehended, because they are most difficult to be reconciled. The friends of the cause create impediments, of which its opponents take advantage more fatal than all that have gone before:—objections on the score of expediency, arising out of the partial operation of our measures, out of local interests and sectional feelings. We are forbidden to exert our power in one part of the country, unless we employ it in every other. We must not spend money in the West till we can spend as much in the East, nor begin a work in the Middle States till we can use a like sum in every part of the country. It behoves the friends of internal improvements to discourage these difficulties in the outset. They will not be so easily combated by any argument, however powerful, because, arising out of local views, and conflicting feelings of sectional interests, they are regulated by the prejudices, and not the reason, of gentlemen. They are unyielding in their character, and acquire force by every partial success.

Ever since the termination of the last war, we had been making surveys, with a view to the military defence of the country. A regular corps of engineers had been constantly employed in developing the most eligible sites for these works. Numerous reports had been

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made, and the surveys were yet in progress. Was it ever pretended that we should not begin to fortify until we could know all that it would become necessary to do in this way? Should we have refused to fortify New York, or Boston, or the Delaware, or the Chesapeake, till the whole country could be explored, to see how much more might be done? To protect no part of the country until we could see how many others might be protected? On the contrary, said Mr. McL., determining upon the expediency of defence by fortifications, we have proceeded with all reasonable despatch; we have consulted the particular exigencies of the country, acted upon information as to particular places, whenever it was complete, leaving others for future operations. With this view, we have classified our system of defence in reference to their necessity. One class to be executed immediately, another at a longer period, and a third still more remote. If this work, of the Delaware and Chesapeake Canal, be important in a military point of view, and he hoped to show it was not less so than some of those fortifications, why not act in relation to it upon the same principle? If it be intimately connected with the military defence of the Atlantic frontier, and he believed it was—the gentleman himself had placed it on this ground—why not begin it at once, with the other great works now in progress for the same object?

Mr. McL. said, in every point of view in which he had considered the subject, the measure proposed by this bill was recommended by the wisest considerations. He had always entertained the opinion, that the best mode of applying the resources of the Government to great national works, would be to come in aid of individual skill and enterprise, where practicable, rather than to execute the work by the Government. Such works, when undertaken exclusively by the Government, were always more expensive, and sources of constant burden and expense, in making repairs and keeping them up. This was a reasonable objection urged to the appropriation for the Cumberland road. But, where individual enterprise, always careful of its own interests, and not likely to embark in ruinous projects, had been led to the projection of a work of this description, the Government might safely embark its capital in aid of the enterprise. This would be to cherish, encourage, and sustain, the spirit and industry of the citizens, and, without the absolute gift of the funds, conduct it to the mutual improvement of the country, and the attainment of great national objects. There could be little danger of loss in such a policy, since it rarely happens that a body of intelligent men would embark their individual means without a reasonable prospect of profitable employment; and, the work once being accomplished, the same funds owned by the Government could be transferred to other objects of similar importance, and ultimately attain the most extensive bene-

fits, without any sensible effect upon the means of the revenue.

The bill before the House conforms to this policy. It proposes a subscription for 1,500 shares of stock in the Delaware and Chesapeake Canal Company, to be paid at the same periods, and in similar proportions, as the other stockholders, and to give the Government a control over the company in proportion to its interests.

The work itself is of the utmost importance, not only in a commercial point of view, but as it regards all the great interests of the nation. Consider it as you will, it is exceeded by no other work of the kind which has been projected in this country. It is not a work of experiment, suddenly suggested, and hastily adopted, by the magnificence of its consequences. It is a project of half a century; has grown up under the auspices of the most enlightened, scientific, and practical men for that period of time. A company has been incorporated by the authority of three States, authorized to make the work. Individual subscriptions, to the amount of ——— dollars, have been obtained; and, in aid of these, and in common with so many others, the Government is now asked to subscribe for 1,500 shares, which, if done, the work will be completed.

In embarking in this enterprise, we violate no State rights—they at least are, in this instance, secure. We encroach upon no municipal authority, because we are acting under its immediate and express sanction. Of the entire and absolute practicability of the work, with the present aid, no one who has attended to the subject, and to the lucid exposition of the honorable chairman of the committee who reported the bill, can doubt. The route has been established under the direction of the most skilful engineers, civil and military, in the United States. The estimates have been judiciously made—contracts for the whole work already entered into with responsible persons, at a sum within the estimates, and the work is in a rapid and prosperous advancement. The gentleman from South Carolina calls for a survey. Sir, he has it, and the best that could be made. The gentleman has not yet to learn that this work has been surveyed, in two successive years, by a part of the military corps of engineers of the United States, under the immediate direction of the Government, and by them approved and adopted. Sir, I should be safe in saying that, to the judgment of these engineers, the present location of the route of this canal is to be mainly attributed. In the earlier stages of this work, a different route had been contemplated, and at a far less expense, within the amount of individual subscriptions. This route has been changed by the recent surveys, and another adopted, requiring more labor and more money. When I consider the character of the men engaged in this survey, I am bound to believe that their location has been judicious; but it is, nevertheless, owing, in a great degree, to the decision of

these United States engineers, that the cost of the work has exceeded the means of the individual subscription, and therefore requires the aid of the Government. But the gentleman says we must wait for the surveys of the last session. How can they aid our deliberations? Of what benefit will the surveys of the country west of the mountains, or on the lakes, be to us, in relation to this Delaware and Chesapeake Canal? We know as much of the work now as we should after any number of surveys. It is admitted, on all hands, that this is a work of the highest national character, essential for purposes of commerce and defence; that, begin when we may, this must be the first object to which we must turn: then, why wait, I repeat, for surveys, which can shed no new light upon a subject of which we are already fully informed?

Mr. MCL. said he should maintain, without the fear of contradiction, that this chain of interior canals was essential to the military power of this Government: complete protection could not be given to the country without it. The Government could not exert itself so wisely or profitably as in augmenting the means of defence. The arm of the Government was never so strong as when raised for the protection of the citizen. Its powers of defence endeared it to the people, led them to perceive and acknowledge its necessity, to admire its utility, and strengthen its resources. This Government could not be too lavish of its funds in the means of defence. No expenditure could be wasteful or improvident, if made among our own people, for their complete protection. But the raising of armies and equipment of fleets, were not the only means of defence: to a certain extent they were necessary, but totally inadequate to all the objects of defence. They were, moreover, expensive, in some instances dangerous, and he doubted whether the utmost resources of this country would be sufficient to defend the people by armies, navies, and even fortifications. We were not defended by an army which should wait to receive the enemy on his landing, and drive him back to his ships. An enemy commanding great maritime means, would distress us more, and produce greater ruin, by shutting up our ports without landing a soldier. By this means he would carry the pressure of war into every part of the country, and enfeeble the Government in maintaining large armies to watch his invasion. Our means of defence, to be effectual, should be carried to the homes and the business of our population. We should give protection to the labor and occupation of the citizen, so that he should not only be secure in his person, but safe in the pursuit of his industry. Such a species of defence has been entirely overlooked in considering this subject. But we cannot have forgotten the experience of the last war. We suffered, it is true, from the sudden incursions of the enemy, but in no degree equal to the calamities which everywhere pervaded the Union, even those parts

most remote from the immediate theatre of the war. A blockading squadron at the Chesapeake and the Delaware, completely cut off the communication between the northern and southern sections of the Union. The industry of the people was paralyzed, the product of their labor rotted on their hands, the activity of the manufacturer was at a stand, the means of interchange were destroyed, individual suffering everywhere prevailed; no one felt the power of the Government; every one complained of its weakness. If, in such a war, there were an easy internal canal communication, we should be, in a great degree, beyond the power of the enemy. He might thunder in vain on our shores; our fortifications well garrisoned; aided by a small army judiciously posted, would prevent his landing, and the great business of the community proceed actively and securely. The horrors of war would not visit the interior. Individual happiness and comfort would be promoted, the wealth of the nation be increased, and when the Government should have occasion to call upon the friends of the people to strengthen its arm, it would not call in vain. It would call upon a cheerful, powerful population, and thus derive resources adequate to its greatest necessities. Sir, I pray gentlemen to allow the experience of the late war, aided by these considerations, to inculcate upon them to delay no longer the accomplishment of this great means of national defence and national protection. We are admonished, however, that the state of the treasury will not justify this expenditure. We are told to wait till the public debt is paid off, and the nation is out of debt. This argument has been so often repeated during the present session, as to induce some to believe there may be something in it. After hearing from every department of the Government so much about the flourishing state of our finances, it would indeed be strange if we had not the means of making a subscription of \$350,000, to be paid gradually in the course of two or three years, without sensibly increasing our obligations.

Mr. MALLARY, of Vermont, observed that when, at the last session, the bill for procuring estimates and surveys, preparatory to a system of internal improvement, had been discussed, the friends of that general system placed the measure on the ground, that it was to be carried into immediate execution. He doubted the power of Congress, under the constitution, to adopt that system. He would not now enter upon the constitutional question, but would merely state the reasons why, notwithstanding his sentiments on that subject, he felt at liberty to vote for the present bill.

The doctrine which had been then advanced, he understood to be this—that the General Government had, by the constitution, an inherent power to determine upon the best route for a road or a canal, and then to make the canal or the road. Mr. M. had objected to this, because he thought it was interfering with the authority

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of the States, and he had, therefore, voted against the bill for surveys and estimates. What, asked Mr. M., is the system to which that bill had reference, and about which so much had been said on this floor? So far as he understood it, it was a plan which was to emanate wholly from the Executive Department of the Government. According to that bill, the President had the making of these surveys placed under his own absolute control: he might send engineers just where he pleased; collect just such facts as he might think important and interesting, and present them to this House. When this should be done, what was the course to be pursued by this House? Was he to understand gentlemen that this House was pledged to carry into effect the plan of the Executive? He had the greatest respect for the President; but in examining a subject of this kind, it was proper to consider it in respect to possibilities, and it certainly was possible that a plan, emanating from the Executive, might, when it arrived at this House, be considered as defective in extent, or partial in its bearing—there might be many reasons why the House should not think proper to adopt it. What then was to be done? a new plan must be gone into, and still further delays occasioned. He apprehended that those who are opposed to the system, on constitutional principles, would have reason to fear that the plan would be so formed as to combine all the different parts of the country; and, if any such combination was attempted, the feelings of all must be consulted. Besides, if we adopt a general system, we run the hazard of collision between one section of the country and another. For his own part, whenever the State of Vermont or Massachusetts, or any other State, presented to Congress a useful object, he thought they might rely on the Government to give it such aid and support as its merits might require. He thought that Congress was much safer, in selecting objects for itself, than in having them selected and arranged for them. This they were perfectly competent to do, on isolated objects, without regard to any system. For himself, he wanted no aid from other sections of the country, to induce him to vote. If the gentlemen of the South wished to unite the Tennessee River with the streams that empty into the Gulf of Mexico, he was ready to act; but a report on that subject would not make him any wiser about the Delaware and Chesapeake Canal. Congress must judge on each object singly. To the present object, any constitutional objections against the system did not apply. There was here no question of jurisdiction—no State rights were invaded—the only question to be considered, was, Will you appropriate a sum of money to promote invaluable and important objects.

Mr. ELLIS, of Pennsylvania, felt great reluctance to occupy any portion of the time of the House, after the very able argument they had just listened to from the honorable gentleman from Delaware, (Mr. McLANE,) and after the grounds upon which the friends of the bill rested

it, had been so amply explored by that gentleman and others. Under these circumstances, and the lateness of the hour, the attention of the House to the few remarks he had to make, he could only consider as matter of indulgence.

In the object of the present bill, every thing is prepared and digested. He said that he considered an appropriation in this House to imply and presuppose an estimate; he would always vote upon this principle. In the appropriations for the army and navy, the Secretaries of those great Departments were bound to give this House such lucid estimates, such clear statements of facts, that the appropriations to be made would follow of course. How, he asked, would these principles apply to the subject under consideration? Nothing was here left to chance. Surveys, estimates, and contracts under those estimates, had all been actually made; every thing of this kind was settled, and the operations upon the canal were now progressing, under a board of enlightened managers, and an able engineer. Suppose the general system digested and produced, it could throw no additional light on this subject. It stands on its own merits, and is confessedly an object of the first national importance; an extensive portion of several States will be greatly aided by it. He said that the navigation of the Susquehanna had long been a subject extremely interesting to the people of Pennsylvania. The Legislature of that State had made liberal appropriations to improve the bed of that river through all its falls to tide water.

The navigation of that river has always been of the most hazardous kind, and yet the hardy and enterprising men who live along its shores, had surmounted all its natural difficulties in getting the produce of the country to a market.

According to a hasty estimate which he had made, from his knowledge of the country bordering upon this river, and without referring to any certain data, he supposed that, in the article of wheat and flour alone, there was an amount of \$1,000,000 annually transported to market by that river. To this may be added the other productions of that immense and fertile country bordering on this river, pork, whiskey, lumber; and to these again may be added a new article in the interior commerce of the States, namely, coal. The country bordering upon the Susquehanna abounds with this mineral, and, under all the present disadvantages, has found its way to a market at your cities.

The great country of the Susquehanna, he said, was rapidly improving, and as rapidly increasing in population. All that he had said of the Susquehanna might be applied to the Delaware. The article of coal, on that river, had become a most interesting matter, in the commerce of the interior with Philadelphia. It seemed then, in these views of the subject, of the first importance, that the contemplated communication should be completed, between the bays of these rivers. In a military point of view, he considered it of infinite importance to

the country, that the object should be effected. Upon the completion of the canal through Jersey, it would open the most perfect communication between Baltimore, Philadelphia, and New York. Troops could be moved to any of those points, with a celerity now impossible. And to this may be added, the transportation of every species of the munitions of war. In a word, as regarded the defence of the country, he considered it as of greater utility to the country than any one single fortification.

Mr. BRECK, of Pennsylvania, observed, that he rose not to enter into a discussion of the general subject, but merely to state the necessity of the aid of Government to prevent this undertaking from being entirely interrupted. He was in possession of data, from which he was enabled to state that, if the present bill should fail, that important work must again cease, probably for many years. The gentleman from South Carolina, indeed, (Mr. HAMILTON,) had said, that the canal passed through a populous and wealthy country, and such were the interests embarked in it, that, whether Government subscribed or not, the undertaking would certainly go on. In this the gentleman was greatly mistaken, and gentlemen would perceive that the reverse was true, when he made to them a few statements of the actual state of facts on this subject. It was almost twenty years since this canal was commenced. At that time, between two and three hundred thousand dollars had been subscribed, but subsequently, the course originally proposed for the canal had been changed. The money was expended, and the work ceased for many years. About two years ago the design was revived. The old subscription list had been examined, and it was now found that it would yield about 50 per cent. The company had then applied to the Legislatures of Pennsylvania, Delaware, and Maryland, each of which had made grants of money to aid the funds. Efforts were then made in the city of Philadelphia to form a fund on which to recommence the work, but the attempt was attended with the greatest difficulty. Ward meetings were called, committees were appointed, all classes of people were applied to, not only merchants and capitalists, but shopkeepers and mechanics, and those of the lowest grade. The committees offered to receive subscriptions of a single dollar, and in many instances a subscription of ten dollars had been received, which were the aggregate contributions of several neighbors, who had united for the purpose. In this manner, four hundred thousand dollars were obtained, and there was now a deficiency of five hundred thousand dollars, and he was warranted in saying, that any attempt to get more in the city of Philadelphia would be made in vain.

The question being now called for, and being about to be put—

Mr. LIVINGSTON intimated an intention to address the House, and requested, on account

of the late hour, an adjournment: which was agreed to.

FRIDAY, January 21.

*Chesapeake and Delaware Canal.*

Mr. TRIMBLE, of Kentucky, rose, to say that the House would not have the pleasure of hearing the gentleman from Louisiana, (Mr. LIVINGSTON,) as was expected when the adjournment was moved on yesterday. That gentleman wishes it to be known that the state of his health prevents him from being in his seat this morning, and, it is said, that he does not desire the vote upon the bill to be delayed upon his account.

[A running debate then took place, generally covering the ground already gone over, in which Mr. Trimble, Mr. Hamilton, Mr. Garrison of New Jersey, Mr. Mallory of Vermont, Mr. Sharpe of New York, Mr. Allen of Massachusetts, Mr. Little of Maryland, Mr. Marvin of New York, Mr. Storrs of New York, Mr. Buchanan of Pennsylvania, and Mr. McLane of Delaware, severally took part.]

The question having been repeatedly called for, was then put and decided in the affirmative, by yeas and nays, as follows:

YEAS.—Messrs. Adams, Alexander of Tenn., Allen of Mass., Allison, Baylies, Bartley, Beecher, Blair, Breck, Brent, Buchanan, Call, Cambreleng, Campbell of Ohio, Cassedy, Collins, Condict, Cook, Crowninshield, Cushman, Cuthbert, Durfee, Dwight, Ellis, Farrelly, Foot of Conn., Forsyth, Forward, Fuller, Gatlin, Gazlay, Gurley, Harris, Hayden, Hayward, Hemphill, Henry, Herkimer, Holcombe, Houston, Ingham, Isaacs, Jennings, Johnson of Va., J. T. Johnson, F. Johnson, Kent, Kremer, Lathrop, Lawrence, Lee, Letcher, Locke, McArthur, McDuffie, McKean, McKee, McLane of Del., McLean of Ohio, Mallory, Martindale, Matlack, Mercer, Metcalfe, Miller, Mitchell of Penn., Mitchell of Md., Moore of Ken., Moore of Ala., Neale, Newton, Owen, Patterson of Penn., Patterson of Ohio, Plumer of N. H., Plumer of Penn., Poinsett, Rankin, Reynolds, Rose, Ross, Sanford, Scott, Sharpe, Sloane, Wm. Smith, Spence, Standefer, Sterling, J. Stephenson, Stewart, Storrs, Strong, Swan, Test, Thompson of Penn., Thompson of Ken., Tomlinson, Trimble, Udree, Vance of Ohio, Van Rensselaer, Vinton, Wayne, Webster, Whittlesey, Wickliffe, James Wilson, Henry Wilson, Wilson of Ohio, Wolfe, Woods, Wright—118.

NAYS.—Messrs. Abbot, Alexander of Va., Bailey, Barber of Conn., P. P. Barbour, Bartlett, Bassett, Bradley, Buck, Burleigh, Cady, Campbell of S. C., Carey, Clark, Cooke, Connor, Crofts, Craig, Culpeper, Day, Dwinell, Edwards of N. C., Findlay, Foote, of N. Y., Frost, Garrison, Gist, Govan, Hall, Hamilton, Harvey, Herrick, Hogeboom, Hooks, Jenkins, Lefwich, Lincoln, Litchfield, Little, Livermore, Long, Longfellow, McCoy, McKim, Mangum, Marvin, Matson, Morgan, O'Brien, Olin, Outlaw, Richards, Saunders, Sibley, Arthur Smith, Alexander Smyth, Spaight, A. Stevenson, Stoddard, Tallaferro, Tattall, Taylor, Ten Eyck, Thompson of Geo., Tucker of Va., Tucker of S. C., Tyson,

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Whipple, Whitman, Williams of N. Y., Williams of Va., Williams of N. C., Wilson of S. C., Wood—74.

So the bill was passed and sent to the Senate for concurrence.

*Continuation of the Cumberland Road.*

The engrossed bill to continue the Cumberland road was then read a third time, and, the question being on its passage,

Mr. FORSYTH, of Geo., expressed his regret that he had not been present when the yeas and nays were taken on passing the bill to a third reading, that he might have had the pleasure then of recording his vote, as he should vote upon the present question in the affirmative.

Mr. ABOHER, of Va., demanding the yeas and nays, they were taken accordingly; and were as follows:

YEAS.—Messrs. Adams, Alexander of Tenn., Allison, Baylies, J. S. Barbour, Bartley, Beecher, Blair, Bradley, Breck, Brent, Burleigh, Call, Cambreleng, Campbell of Ohio, Cassedy, Clark, Condict, Cook, Crowninshield, Cushman, Cuthbert, Durfee, Ellis, Farrelly, Forsyth, Forward, Fuller, Gazlay, Gurley, Hayden, Hemphill, Henry, Holcombe, Houston, Ingham, Isaacs, Jennings, J. T. Johnson, F. Johnson, Kent, Kremer, Lawrence, Lee, Letcher, Little, Locke, McArthur, McKean, McKee, McKim, McLane of Del., McLean of Ohio, Mallary, Martindale, Mercer, Metcalfe, Miller, Mitchell of Md., Moore of Ken., Moore of Ala., Neale, Newton, Owen, Patterson of Penn., Patterson of Ohio, Plumer of N. H., Poinsett, Reed, Reynolds, Ross, Sandford, Sloane, Spence, Standefer, J. Stephenson, Stewart, Storrs, Strong, Test, Thompson of Ken., Tomlinson, Trimble, Udree, Vance of Ohio, Vinton, Wayne, Webster, Whittlesey, Wickliffe, James Wilson, Henry Wilson, Wilson of Ohio, Wolfe, Woods, Wright—97.

NAYS.—Messrs. Abbot, Alexander of Va., Allen of Mass., Archer, Bailey, P. P. Barbour, Campbell of S. C., Carey, Cooke, Connery, Crafts, Craig, Culpeper, Day, Dwinell, Edwards of N. C., Foot of Conn., Foote of N. Y., Frost, Garrison, Gatlin, Govan, Hamilton, Harris, Harvey, Herrick, Herkimer, Hobart, Hooks, Jenkins, Leftwich, Lincoln, Litchfield, Livermore, Long, Longfellow, McCoy, McDuffie, Mangum, Marvin, Matlack, Matson, Mitchell of Penn., Olin, Outlaw, Plumer of Penn., Richards, Saunders, Sharpe, Sibley, Arthur Smith, Alexander Smyth, Spaight, Sterling, A. Stevenson, Stoddard, Swan, Tattnell, Taylor, Ten Eyck, Thompson of Penn., Thompson of Geo., Tucker of Va., Tucker of S. C., Tyson, Whipple, Whitman, Williams of N. Y., Williams of Va., Williams of N. C., Wilson of S. C., Wood—72.

So the bill was passed, and sent to the Senate for concurrence.

MONDAY, January 24.

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On motion of Mr. WEBSTER, of Massachusetts, the House proceeded to the consideration of the bill making further provisions for the punishment of certain crimes committed against the United States.

Mr. WICKLIFFE, of Kentucky, said, the strongest objection which he had to this bill was one which he had taken occasion to state on a former occasion, viz: that it extends the jurisdiction of the United States to offences committed within the territories of the several States. It had been said that such an extension would produce no difficulty, because, as it is an unpleasant duty to inflict punishments, the State governments would be perfectly willing that the General Government should take it off of their hands. But, unpleasant as it might be, Mr. W. said, if it was necessary to punish crime, the State governments were not reluctant to prescribe the punishment. The period might arrive when the question, as to the right to punish offences might become an important question between the two Governments. Cases might occur, in which the State governments would claim the right of punishing offences within their jurisdiction. If, said he, such a state of things *may* arise, and the exercise of this power is not *necessary* to the due execution of the express powers of the General Government, I am for leaving the punishment of these offences to the State governments, which have been heretofore not slow to punish crimes committed either upon persons or property within their territorial limits. To his mind, Mr. W. said, the bill presented a strange anomaly. He could not conceive of the existence of a right in *two* Governments to punish the same individual for the same offence. He could not recognize the right of concurrent jurisdiction, as it had been termed in debate, to inflict separate and distinct punishment for the same offence upon the same individual. If the right exists, what will be the consequence of its exercise? Can one sovereign be deprived of his right by the exercise of a similar right by another? Can the exercise of the right by this Government deprive the State governments of their right in this respect? If there be any right which may be emphatically termed State—any right guaranteed to every state in the Union, it is the right of punishing offences committed within its limits. Then, unless the power of punishing these offences were expressly granted, or indispensable to the exercise of power expressly granted, to the General Government, it would be unwise in it to undertake to exercise that right.

As to the argument by which the power to punish these was incidental to the power to define admiralty and maritime jurisdiction, Mr. W. said he could not subscribe to it in its full extent; and, unless the power to punish offences was contained in that clause of the constitution, it was not contained in any other, unless it was an implied power, derived from the power to regulate commerce. He was not prepared to admit, that, under that clause of the constitution, Congress could provide for the punishment of offences committed within the territory of the States. For, if they could, all offences against private property and persons would fall within the cognizance of Congress. But, suppose it were con-



ceded that this power actually does result from the admiralty and maritime jurisdiction of the United States Courts; have we, said he, any data by which we can measure the extent of that jurisdiction? Can we say at what point, in increasing this jurisdiction, the federal judiciary will stop? Does the federal constitution, or do the laws of the United States, prescribe any limit to the extent of that jurisdiction? For his part, he said, he had in vain sought for a limit to it. It was worthy of remark, that, a short time after the adoption of the constitution, when the Government was about to legislate for putting its powers fairly in execution, there was, in all the statutes for the punishment of offences under admiralty jurisdiction, an express exception as to offences committed within the territorial limits of the States. This ought to be some guide as to the jurisdiction which may be rightfully exercised by the General Government under that clause of the constitution. The House was asked to put within federal jurisdiction all crimes committed within maritime jurisdiction. What is the extent of that jurisdiction? In civil causes, locality or character may determine the question: in criminal cases, the locality alone, and that is to be regulated by the practice and discretion or judgment of the court. It had been said that it extends wherever the tide ebbs and flows. But, Mr. W. demanded, where is the law which confines that jurisdiction to the ebb and flow of the tides? Adverting to the jurisdiction of the admiralty courts of Great Britain, as settled by practice, or limited by the statutes of that country, he said that the statutory definitions, as far as he understood, were not applicable, as authority, in the courts of this country. He here repeated, what he had stated on a former occasion, that admiralty jurisdiction had been claimed and exercised in a State of this Union where the ebb and flow of the tide is not known. Since making that statement, the other day he had learnt that the same jurisdiction had been exercised in other States—at Pittsburg, in Pennsylvania, by the District Judge. Is it in contemplation to punish offences, committed upon the Ohio River, in the federal court at Pittsburg? Is it intended that the admiralty jurisdiction of the courts of the United States shall extend to the Ohio, the Mississippi, and the Missouri? Is it proper, is it necessary, that a citizen should be sent three, four, or five hundred miles, to be tried by a federal court for offences committed within the jurisdiction of the State governments? Is it intended to let the federal courts punish offences committed in waters or streams navigable for vessels carrying ten tons burthen? It is not to be denied that the Ohio and Mississippi Rivers are capable of bearing vessels of ten tons burthen. If this bill passes, then you extend to the federal judiciary the power of punishing common offences, within the limits of States, where the State authorities are always competent and always willing to punish them. There cannot, therefore, be any necessity for the

passage of this bill. Mr. W. here quoted the act of Congress extending the jurisdiction of the District Court of the United States to cases arising on waters navigable by vessels or boats of ten tons burthen, and asked whether it was necessary to the exercise of the specific powers of this Government, that this jurisdiction should be exercised by the federal courts, or given to them, as to offences, some of which were described in this bill. He adverted to a celebrated decision of Judge Story, upon the principles assumed in which, he said, no man could tell where admiralty jurisdiction might *not* be exercised; and, he said, if he were to judge from the last opinion of the same judge on this subject, he should infer that he was prepared to act upon the principle of the Latin adage, the English of which is, that it is the province of a good judge to extend his jurisdiction. On the subject of maritime jurisdiction, the judge says—“The language of the constitution will warrant the most liberal interpretation; and it may not be unfit to hold that it had reference to that maritime jurisdiction which *commercial convenience, public policy, and national rights*, have contributed to establish.” Now, Mr. W. said, what might *not*, in the discretion, he might say *legislation* of that court, be the meaning of commercial convenience, public policy, and national rights? I have, said he, rather a repugnance to granting to that court more jurisdiction than is absolutely necessary for the execution of the powers of the General Government. From what we have seen, if we may judge from that, they will not be reluctant to exercise any jurisdiction which they can make out a claim to. If these enactments are not necessary—if the States have not refused to punish these crimes when committed within their jurisdiction, why should we undertake to perform this duty for them?

As relates to those offences against life, limb, or property, committed without the limits of the States, Mr. W. said he would willingly go with the gentleman from Massachusetts, in legislating for their punishment, provided some proportion was preserved between the punishment and the crime.

Mr. WEBSTER observed, in reply, that the object of the gentleman from Kentucky might be attained without recommitting the bill, by moving amendments calculated to remove his objections to it in its present form. Recommitment was a practice resorted to only when the whole frame of a bill required altering, and the entire bill was to be re-cast. As to the third section, it must be obvious, that, where the jurisdiction of a small place, containing only a few hundreds of people, (a navy yard for instance,) was ceded to the United States, some provision was required for the punishment of offences; and as, from the use to which the place was to be put, some crimes were likely to be more frequently committed than others, the committee had thought it sufficient to provide for these, and then to leave the residue to be punished by the

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laws of the State in which the yard, &c., might be. He was persuaded that the people would not view it as any hardship, that the great class of minor offences should continue to be punished in the same manner as they had been before the session. This provision in the third section embraced the whole of a bill on this subject, which passed the Senate at the last session. The committee did not suppose it incumbent on them to enter into the details of a complete code of penal laws for a few hundreds of the people in the United States dock-yards and arsenals. With respect to the other objection of the gentleman from Kentucky, respecting confining the operation of the bill to the high seas and places not within the jurisdiction of any of the States, Mr. WEBSTER said that it was his intention (though not by any means for the reasons assigned by that gentleman, but in reluctant acquiescence with the wishes of a highly respected member of the Judiciary Committee) to modify the bill in the manner the gentleman desired.

In reply to what the gentleman seemed to apprehend from extending the admiralty jurisdiction of the federal courts to the State of Kentucky, he desired the gentleman to remember, that it was only the criminal jurisdiction which was proposed to be exercised. The cases to which the gentleman had referred, were all under its civil jurisdiction, a jurisdiction which often attaches from the subject-matter of contracts, and which, on that account, is much more extensive than the criminal. As to the contests which the gentleman had mentioned, between the civil and the common law courts, none, so far as his knowledge extended, had even thought of contending that the admiralty jurisdiction of England extended to cases of revenue.

Mr. WHEAT, of Ohio said, that he concurred with the gentleman from Massachusetts, that there existed great defects in the criminal law of the United States, and that it was highly proper and necessary that they should be remedied; yet he could not consent, in the attempt to remedy them, to give to the courts of the United States a jurisdiction which he did not think was given by the constitution. The bill extended that jurisdiction to navy yards and armories, neither of which were mentioned in that clause of the constitution which enumerates the places where the exclusive jurisdiction of the United States is to be exercised. He would confine the language of the bill, in this part of it, to the very words of the constitution, as he was entirely opposed to giving, by any act of legislation, a construction to any part of that instrument. The United States can get jurisdiction only by cession from a particular State. He moved to strike out the words "navy yard," "arsenal."

The Chair pronounced the motion not to be in order until the whole bill had been gone through.

On motion of Mr. WEBSTER, the fifth section of the bill, which provides for the punishment of offences committed in any foreign port, on

board vessels owned by citizens of the United States, was amended by inserting the following words:

"By any person belonging to the company of said ship, or any passenger, on any other person belonging to the company of said ship, or any other passenger."

On motion of Mr. WEBSTER, the words "and out of the jurisdiction of any particular State" were added to those parts of the bill which prescribe the limits within which the crimes to be punished must have been committed. Mr. W. further stated, that the present law provided punishment against seamen who "make revolt." But, as this term is unknown to both the civil and the common law, and is found only in the act of Congress, to which he referred, a question had arisen in the courts as to what acts constituted a revolt; and in one case it had been decided, that, as there were precedents, or legal means of ascertaining what was the extent of that term, so much of the act as prescribes the punishment of a revolt is void. To meet this difficulty, he proposed the following:

[*Sec. 5. (printed bill) line 35, after "pirate."*]

"Or shall unlawfully imprison or confine the master or commander of such ship or vessel, with intent to deprive him of his lawful command, or to compel him to do any act or thing contrary to his duty, or shall combine and conspire with any other person to make a mutiny or revolt among the crew of such ship or vessel, or to stir up among the crew a general disobedience or resistance to any lawful command or authority of the commander or officers of such ship or vessel."

A proviso was added to the end of the eleventh section, (which provides the punishment of death for burning or destroying a vessel of war of the United States,) in the words following:

"*Provided*, That nothing herein contained shall be construed to take away or impair the right of any court-martial to punish any offence which, by the laws of the United States, may be punishable by such court."

The following sections were then, on motion of Mr. WEBSTER, added at the end of the bill. In illustrating the first of them, that murder, manslaughter, and maiming were the only offences now punished by the bill, no provision was made for that class of offences called felonious assaults; for want of which, it had actually happened, that a sailor, who cut the throat of his captain with a razor, from ear to ear, could receive no punishment whatever, because, by a miracle, the captain had recovered. And, in like manner, with respect to the second, that there had lately occurred two cases, in which conspiracies to defraud the underwriters by sinking the ships at sea, had gone unpunished, although clearly proved, because the attempt did not succeed.

[*At the end of Sec. 22, of printed amendments.*]

"SEC. 22. *And be it further enacted*, That if any person or persons upon the high seas, or in any

arm of the sea, or in any river, harbor or creek, and out of the jurisdiction of any particular State as aforesaid, on board any vessel belonging in whole or in part to the United States, or any citizen or citizens thereof, shall, with a dangerous weapon, or with intent to kill, rob, steal, or to commit a mayhem or rape, or to perpetrate any other felony, commit an assault on another, such person shall, on conviction thereof, be punished, by fine, not exceeding three thousand dollars, and by imprisonment and confinement to hard labor not exceeding three years, according to the aggravation of the offence."

"Sec. 23. *And be it further enacted*, That, if any person or persons shall, on the high sea, or within the United States, wilfully and corruptly conspire, combine, and confederate with any other person or persons, such person or persons being either within or without the United States, to cast away, burn, or otherwise destroy any ship or vessel, or to procure the same to be done, with intent to injure any person that hath underwritten, or shall thereafterwards underwrite any policy of insurance thereon, or on goods on board thereof, or shall, within the United States, build or fit out, or aid in building or fitting out, any ship or vessel, with intent that the same shall be cast away, burnt, or destroyed, for the purpose, or with the design aforesaid; every person so offending, shall, on conviction thereof, be deemed guilty of felony, and shall be punished, by fine, not exceeding ten thousand dollars, and by imprisonment and confinement to hard labor not exceeding ten years."

"Sec. 24. *And be it further enacted*, That if any of the gold or silver coins which shall be struck or coined at the Mint of the United States, shall be debased or made worse, as to the proportion of fine gold or fine silver therein contained, or shall be of less weight or value than the same ought to be, pursuant to the several acts relating thereto through the default, or with the connivance of any of the officers or persons who shall be employed at the said mint, for the purpose of profit or gain, or otherwise, with a fraudulent intent; and if any of the said officers shall embezzle any of the metals which shall at any time be committed to their charge for the purpose of being coined, or any of the coins which shall be struck or coined at the said mint, every such officer or person who shall commit any or either of said offences, shall be deemed guilty of felony, and shall be sentenced to imprisonment at hard labor for a term not less than one year nor more than ten years, and shall be fined in a sum not exceeding ten thousand dollars."

"*And be it further enacted*, That all acts and parts of acts inconsistent with the provisions of this act shall be and the same are hereby repealed."

Mr. WICKLIFFE then moved to strike out the punishment of death in the 1st section of the bill, (provided for burning any dwelling-house, store, barn, stable, light-house, arsenal, magazine, ropewalk, ware-house, store-house, block-house, barrack, ship or vessel, within any fort, dockyard, navy-yard, arsenal, or magazine, belonging to the United States,) and substitute in lieu thereof—

"Shall be punished, by fine, not exceeding 5,000 dollars, and by imprisonment and confinement at hard labor, not exceeding 15 years, according to the aggravation of the offence."

As this motion went to a leading feature of the bill, Mr. WEBSTER rose and said, that he might as well take the present opportunity as any other, briefly to state what were his views in relation to the penal parts of the bill. He regretted, as much as any of the gentlemen could do, the necessity of capital punishments, and he did not know that he was not prepared to say, that a system might be formed in which it should be dispensed with altogether. But such was not the present system of our laws. We punish the crimes of treason, murder, and rape, with death, and so long as this punishment was retained at all, he conceived that the crime of arson merited it as richly as either of the other offences. He would state, in a few words, his reasons for this opinion. No human code, proceeding on just principle, could undertake to administer any part of that moral retribution, which belonged to the general government of the Universe. The great objects of human punishments is to deter, by example, from the commission of crimes. Laws do not, or ought not, to proceed on a vindictive principle. Offenders are punished, not to take vengeance of them, but that others may not offend in like manner. *Nemo prudens punit quia peccatum est, sed ne peccetur*. Such was the sentiment of Seneca, and it was a just sentiment. The true inquiry, therefore, is, what degree of punishment is proper for the purpose of prevention, and to secure the safety of lives and property? It is essential to consider, therefore, in every case, not only whether the crime be highly injurious and dangerous to community, but, also, whether it be of easy, or of difficult perpetration; whether it be usually open or secret; and if secret, whether detection be generally easy or difficult. Now, with respect to arson, or the malicious burning of dwelling-houses, none could doubt, in the first place, its enormity, and the danger and destruction which it brought on life and property. To him it appeared certainly not less atrocious than ordinary murder. It was generally an act of deliberation, and it endangered, not one life only, but many lives. In the next place, it was easy to be committed—it did not require much preparation, or the favor of particular or unusual circumstances, or the aid of numbers. Lastly, it was of difficult detection. It is usually perpetrated in darkness, and the offender may have gone far from the deposited sparks before they show themselves in general conflagration. Experience proves, that extensive fires often happen in cities, under circumstances clearly evincing the agency of incendiaries, where there has been no conviction, and no detection. The hope of escape, therefore, in such cases is great, and in minds so depraved, as to be willing to commit the deed, it must evidently be controlled and counterbalanced, by the terror of some dreadful punishment, if detection should follow. Still, however, if the House, on due deliberation, should think that the public safety could be sufficiently secured, he should sincerely rejoice.

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*United States Penal Code.*

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But, for himself, he had not been able to bring his mind to that conclusion.

The motion was agreed to; and the House adjourned accordingly.

TUESDAY, January 25.

Mr. ROSS, from the Committee on the Judiciary, reported a bill fixing the place for holding the Circuit and District Courts of the United States for the Southern District of New York; which was twice read, and ordered to be engrossed for a third reading on Monday next.

*Penal Code of the United States.*

The House then resumed the unfinished business of yesterday, being the bill further to provide for the punishment of crimes against the United States.

Mr. WHEATLE then proposed an amendment to the first section of the bill, so as to make the burning of any store, barn, or stable, a capital offence, only when such store, barn, &c., was parcel of a dwelling-house, or mansion-house; and to amend the second section of the bill, so that the burning of a light-house, arsenal, magazine, ropewalk, warehouse, store-house, block-house, barrack, or any ship or vessel, should be punishable by fine and imprisonment.

The section respecting offences against underwriters, was slightly amended by inserting, after the word "person," the words "or body politic."

And, on motion of Mr. CALL, of Indiana, the 14th section of the bill was so amended, that, if there was no state prison or penitentiary, in the district where the offender is convicted, it shall be lawful for the court to imprison him in the nearest State prison or penitentiary in the limits of any other district. The vote upon this amendment was—ayes 76, noes 61.

On motion of Mr. FORSYTH, the 18th section, which provides that the trial of all offences which shall be committed on the high seas, shall be in the district wherein the offender is apprehended, or into which he may be first brought, was amended by adding, after the word "high seas," the words "or without the limits of any State or District of the United States."

Mr. LIVINGSTON, of Lou., then moved to strike out from the first section, (respecting the burning of dwelling-houses, &c., within any fort, dock-yard, &c., belonging to the United States,) the words "shall be deemed guilty of felony, and shall, on conviction thereof, suffer death," and insert, in lieu thereof, the words, "shall be punished by fine, not exceeding five thousand dollars, and by imprisonment at hard labor for a term not exceeding 15 years."

In support of this amendment, Mr. LIVINGSTON went into an extended and eloquent argument—the heads of which alone we present, in a very succinct form.

He commenced by a deserved compliment to the learned Chairman of the Judiciary Com-

mittee, for bringing forward the present bill, since, in the previous state of the criminal jurisprudence of the United States, there were many different places in which almost all crimes might be committed with absolute impunity. Some learned jurists, he knew, contended that the common law was in full vigor there as elsewhere. But, if so, it introduced a dreadful list of capital offences, and such a one as he hoped never to see recognized in this country.

The question now to be settled, he said, was one of grave and deep concern, namely, whether human life should be taken away as a punishment for the destruction of mere property; for such, in its present form, would be the effect of the provisions of the bill. He avowed it, as his solemn conviction, that it was not proper to take away human life as a punishment for any crime whatever. He had long and deeply reflected on this subject, and the result of his reflection he would now state, 1st. That society have the right to take human life when such an act becomes indispensably necessary for its security, but in no other case. Before adjudging capital punishment, it was therefore proper to inquire, first, whether the evil to be remedied is sufficiently great to warrant it; and, secondly, whether death be the most effectual remedy. As to the crime of arson, he acknowledged it to be of such a magnitude that, if nothing short of the punishment of death would put a stop to it, even death must be inflicted. But, he asked, might it not be prevented by a milder punishment? Had the experiment been tried? If so, had it proved ineffectual? Then, indeed, death must be resorted to. But, if not, the House was bound, in conscience, to make the trial.

He then inquired whether death was a better remedy than the infliction of penalties less severe. He referred to the gradual progress which had been made by all the States in the Union, in softening the features of their penal code. The long black list of 160 capital offences had, by degrees, been reduced in some cases to four or five. He lamented that, while this was the case, under the State governments, the Code of the United States still retained as many as twenty different offences, punishable by death. He traced the progress of a similar mitigation in the laws of European Governments, and particularly those of England, and he expressed a hope that it might be continued until this country should merit the high eulogium bestowed upon the Roman Republic, that, of all nations, it had the mildest punishments. He referred to the doubts expressed by many great and wise men adverse to the right of taking human life at all, and then, considering the subject on grounds of policy merely, he proceeded to examine and to contrast the advantages and disadvantages attending the infliction of capital punishments. The general object of punishment was to prevent crimes; first, that of the criminal himself, and secondly, that of others. Death effectually secured the first point. The criminal capitally executed, could

not repeat his offence. It also, in some degree, secured the second object by presenting to others a striking example, calculated to terrify the imagination and deter from crimes. The third and only additional advantage attending it was, that it was not so expensive as imprisonment. The disadvantages were, in the first place, that, in very many instances, it produced impunity. Such was the reluctance of witnesses, judges, and jurors, to convict when conviction was to be followed by the death of the accused, that he was too often permitted to escape; or, even if the evidence was such as to compel his conviction, a pardon interposed to prevent his punishment. On this head, Mr. L. remarked upon the multiplication of murders, and the comparative rareness of executions, and insisted that, if the punishment were lighter, punishment would be more certain. He applied this remark to the crime in question, and he referred to a statement of the late lamented Mr. Bradford, made in the year 1795, showing that, although the burning of a dwelling-house was made a capital offence by the laws of Pennsylvania, and the burning of other buildings was not so, yet, of all the buildings which had been destroyed by incendiaries, since the introduction of that distinction, by far the greater part were dwelling-houses. The second disadvantage was the effect of the exhibition on the public mind. If frequently exhibited, it had one of two effects, either to give a ferocious character to our population in cherishing and strengthening those feelings which, in Rome, led to the exhibition of gladiators, and in some Romish countries, of the *Auto da Fe*, or else it produced a total indifference. If rarely exhibited, the sufferer was by sympathy converted into a hero, his crime was forgotten, though of the deepest die. The clergy, induced by the best of feelings, gathered around him. The criminal was, or affected to be, impressed by the truths of religion, and he then became a saint—all eyes were fastened upon him—all hearts rejoiced in the triumphs of piety over the most obdurate heart: even the softer sex, forgetting their native horror of crime, flocked around him, administering every comfort; and the felon went forth to the place of execution, as to a triumph, followed by an escort that would not disgrace the most distinguished citizen. He asked whether such punishment could be expected to produce the desired effect? Instead of rendering the criminal detested, and his crime avoided, his crime was softened or forgotten, and he admired as a Christian hero.

Mr. L. here read several extracts from an examination gone into before the British House of Commons, with express relation to this subject, and which concurred to prove that the punishment of death was, in England, attended by no beneficial impression whatever. Under the sanguinary code of that country, crimes, instead of diminishing, had multiplied, and, he believed, had even been more numerous in England since the time of Elizabeth, when there

were sometimes as many as two thousand executions in a single year; on the contrary, he contended that, in proportion as the criminal code in this country had relaxed in rigor, crimes had been diminished; while, at the same time, murder, almost the only one excepted from the mitigation, was never more frequent in the United States than at the present time. He felt persuaded that solitary confinement, if properly conducted, would have a much more beneficial effect than the infliction of death. Let the dark cell of the criminal be marked by the inscription—“*Whoever enters here, leaves hope behind.*” or with this —“*Behold the doom which awaits one human being for the murder of another.*”

Another objection to the punishment of death was the unequal effect produced upon the convict himself. It was a punishment very different in its intensity, as inflicted on different persons. One condemned wretch received it as a blessing; another met it with perfect indifference; while another was perfectly excruciated by the sentence; and, though held to be the most equal of all punishments, it was, in truth, the most unequal.

There existed another disadvantage: this punishment once inflicted, was irrevocable; and, if inflicted wrongfully, admitted of no redress. A mistake might be discovered, but the sufferer was gone; the justice of society could not reach him. Mr. L. here dwelt upon the uncertainty of circumstantial evidence, the dangerous effect of public excitement, and quoted instances in which the offender, after being executed, was found to have been innocent. He inferred the probability of many other similar cases, which were not discovered, because there were few who took any interest in the investigation. Public justice was satisfied, and all farther inquiries slept with the convict in his grave. Had he been punished by imprisonment, the discovery of his innocence would have restored him to liberty, and himself and his family to their former standing. The power of the State might penetrate the dungeon; it could not penetrate the grave—it could not silence the upbraidings of conscience, or stop the widow's tears. In reply to the argument that death had always been awarded as the punishment of murder, he answered, first, that the precedent was not binding; and, in the second place, denied its universality. During a great part of the Roman Republic, death was not inflicted as a punishment for any offence. There was no evidence, from history, that crimes were then unusually numerous. But, when capital punishments were afterwards revived, under the Emperors, everybody knew that crimes were multiplied beyond all example. He would not say, however, that the effect had the punishment of death for its cause. He insisted much upon the experiment made by Leopold, Duke of Tuscany, under whose authority capital punishments had been abolished in that Duchy for twenty years, during which time crimes were comparatively rare,

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and the prisons, at some periods, were literally empty; yet, at no greater distance than Rome, there occurred sixty executions in a period of six months.

Mr. DWIGHT, of Massachusetts, expressed the reluctance with which he said any thing in opposition to a speech which had done so much credit both to the head and the heart of the gentleman from Louisiana, but he could not perceive, although the gentleman had spoken much and eloquently against the infliction of death as a punishment for crime, how his general reasoning had any special application to the present bill. It might be good reasoning against capital punishment in general, but while such punishments were retained in our code, he could not see why the horrible crime of arson should be exempted from it. By the act of 1820, robbery committed on the high seas, and, by the act of 1804, the burning of a vessel on the high seas, were both punished with death. So was forgery of government securities or of the current coin, and, while these offences are capitally punished, on what imaginable ground should a felon be spared who sets fire to a dwelling-house in the dead of night? He did not expressly assert that death was, in any case, indispensable as a punishment; but, if there was any thing which warranted the taking away the life of the offender, it was a crime which put in jeopardy the lives of so many of his fellow-creatures. He did not think it was just to accuse the United States Laws of being so much more severe than those of the individual States. The reason why the former contained a longer list of crimes was to be found in the nature and extent of the United States jurisdiction; many of the crimes, capitally punished, being such as could only be committed against the United States. The laws of this country already deserved the encomium of which the gentleman had spoken, as being milder in punishment than those of any other nation. The gentleman was mistaken in supposing that the list of capital crimes in England had been so far reduced; one hundred and sixty offences were still punished with death by the English law. Nor were there as many pardons as among us. He considered the argument of the gentleman from Louisiana as applicable rather to the manner in which capital punishments are conducted, than to the punishment itself. As to the difficulty of convicting, of which the gentleman had spoken, he did not know that it was any greater in respect to arson, than to the other crimes now capitally punished. Nor was the crime so much more difficult to be proved. The gentleman had said, that the punishment of death, once inflicted, was irremediable. But this was no more than might be said of all punishments. The act of punishment could not be recalled—and the consequences were often such as could not be changed. He had quoted the examinations which took place by order of the House of Commons, from which it appeared that the convicts often exhibited the

most brutal insensibility. He thought, for his own part, that the lives of such men were not worth preserving to the State. What hope was there of men who could engage in playing bowls when they knew that they were just about to be executed? With respect to the instance he had quoted as having happened at New Orleans, where six pirates had been condemned on the testimony of a perjured witness, he thought that the proper doctrine to be raised from the case, was not that piracy should not be punished with death, but that perjury should be. The case must certainly have been strong indeed, if the eloquence of that gentleman had failed to save the innocent. He should have thought it sufficient to persuade any tribunal to spare even the most guilty.

Mr. LIVERMORE, of New Hampshire, laid it down as a universal rule, that punishment should never be inflicted, when it could as safely be avoided; and when it was inflicted, should never be greater than was indispensably necessary. But when we had gone thus far, Mr. L. observed, we were met by the grand and fundamental principle, that society possesses the right to defend itself. Without this principle, all laws were but in vain, and there could be no such thing as social existence in such a world as this. In exercising this right, enough of severity must be employed to effect the end, viz: the common safety. He had been sorry to hear from the gentleman from Louisiana, arguments which addressed themselves rather to the feelings, than to the understanding—arguments, all of which seemed to be in favor of the culprit, rather than of those who suffered by him. Ought not the gentleman to look at the other side of the picture? Ought he not to think of whole families, leaping in the dead of night from amidst the flames of their own dwelling? Ought he not to have favored the House with this picture, as well as with those which he had described so eloquently? Ought he not to direct his compassion to these innocent sufferers, as much as to the culprit? The gentleman had argued against the settled opinion of the whole world. It was needless to answer him, since he was already met by the arguments of all writers, and the experience of all legislators.

Mr. WEBSTER, of Massachusetts, said he had been instructed and gratified by the observations of the gentleman from Louisiana; but he put it to the candor of that gentleman to say, whether it was expedient to go at large into the discussion of a general principle, and then confine its application to one case. The principle was one on which there would be great diversity of opinion; which, if adopted, must alter many laws, and which could as well, and better, be discussed on a general bill, providing that where death is now prescribed, some other punishment should be substituted in its place, according to the different degrees of criminality involved.

If the general question must now be gone into at large, the measure itself must fail, and a bill so much needed would have to be postponed to

another session. He should, therefore, abstain altogether from the general argument, and he hoped that the House would pass the bill, since its provisions did not go further, if so far, as laws already in force.

Mr. KREMER, of Pennsylvania, observed, that nothing but a strong sense of duty would induce him, at this late hour, to trouble the House. He thought that in a question of this kind, all feeling ought to be avoided, and he wished that the gentleman from Louisiana had not addressed the House in so eloquent a manner in behalf of the criminal suffering death. As to the question of policy there could be no doubt. The case was perfectly clear. The experience of every country and every age had declared it, and should we not profit by that experience? The gentleman himself says that there was a time when the capital punishments in other countries were as few as they now are in our own. Why then have they been increased? Because they have been found unavoidable. As to the right of society, it is most clear. The individual makes war against the community, and the country treats him as they would treat any other enemy.

As to the objection from persons sometimes suffering innocently, it might as well be said that you must not have a razor to shave your beard, because, forsooth, you might by chance cut your throat. What does the penitentiary system after all amount to? Experience had demonstrated that it produced a school for crime.

Profligates were collected from every corner of the country, and shut up in one jail, and thus came out greater villains than they went in—they scarcely got home, before they committed new crimes. He quoted the instance of a man in Pennsylvania who had been pardoned out of the State Prison, who exhibited his pardon in triumph all along the road, and, before he reached his home, committed the same crime for which he was put in. He believed the system to be founded in a mistaken feeling of humanity towards the wrong-doer. The gentleman from Louisiana has, indeed, told us that, as the thing is conducted in this country, hanging is quite a frolic, and that the criminal goes off like a saint. This surely was a strong argument for multiplying capital punishments, because we have not too many saints.

The question was then taken on the amendment, and lost; and after a little further conversation between the Chairman of the Judiciary Committee and the gentleman from Louisiana, The House adjourned.

WEDNESDAY, JANUARY 26.

*Rules for Presidential Election in the House of Representatives.*

Mr. WRIGHT, from the Select Committee appointed to prepare rules to be observed in case the election of President and Vice President shall devolve on this House, made the following report:

The Committee appointed "to prepare and report such rules as, in their opinion, may be proper to be observed by this House, in the choice of the President of the United States, whose term of service is to commence on the fourth day of March next, if, on counting the votes given in the several States, in the manner prescribed in the Constitution of the United States, it shall appear that no person has received a majority of the votes of all the Electors of President and Vice President, appointed in the several States,"

**REPORT:**

That the following Rules be observed by the House in the choice of a President of the United States, whose term is to commence on the fourth day of March, 1826, if the choice shall constitutionally devolve upon the House:

1st. In the event of its appearing, on opening all the certificates and counting the votes given by the Electors of the several States for President, that no person has a majority of the votes of the whole number of Electors received, and the result shall have been declared, the same shall be entered on the Journals of this House.

2d. The roll of the House shall then be called, and on its appearing that a member or members from two-thirds of the States are present, the House shall immediately proceed, by ballot, to choose a President from the persons having the highest numbers, not exceeding three, on the list of those voted for as President; and in case neither of those persons shall receive the votes of a majority of all the States on the first ballot, the House shall continue to ballot for a President, without interruption by other business, until a President be chosen.

3d. The doors of the Hall shall be closed during the balloting, except against Members of the Senate, and the Officers of the House; and the galleries shall be cleared on the request of the Delegation of any one State.

4th. From the commencement of the balloting until an election is made, no proposition to adjourn shall be received, unless on the motion of one State, seconded by another State; and the question shall be decided by States. The same rule shall be observed in regard to any motion to change the usual hour for the meeting of the House.

5th. In balloting, the following mode shall be observed, to wit:

The Representatives of each State shall be arranged and seated together, beginning with the seats at the right hand of the Speaker's chair, with the members of the State of Maine, thence proceeding with the members from the States in the order the States are usually named for receiving petitions, around the Hall of the House, until all are seated;

A ballot-box shall be provided for each State;

The Representatives of each State shall, in the first instance, ballot among themselves, in order to ascertain the vote of their State, and they may, if necessary, appoint tellers of their ballots;

After the vote of each State is ascertained, duplicates thereof shall be made out, and, in case any one of the persons from whom the choice is to be made, shall receive a majority of the votes given, on any one balloting, by the Representatives of a State, the name of that person shall be written on each of the duplicates; and, in case the votes so given shall be divided,

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so that neither of said persons shall have a majority of the whole number of votes, given by such State on any one balloting, then the word "*divided*" shall be written on each duplicate;

After the delegation from each State shall have ascertained the vote of their State, the Clerk shall name the States in the order they are usually named for receiving petitions; and, as the name of each State is called, the Sergeant-at-Arms shall present to the delegation of each, two ballot-boxes, in each of which shall be deposited, by some representative of the State, one of the duplicates made as aforesaid, of the vote of said State, in the presence, and subject to the examination, of all the members from said State then present; and, where there is more than one Representative from a State, the duplicates shall not both be deposited by the same person;

When the votes of the States are thus all taken in, the Sergeant-at-Arms shall carry one of the said ballot-boxes to one table, and the other to a separate and distinct table;

One person from each State, represented in the balloting, shall be appointed by its Representatives to tell off said ballots, but in case the Representatives fail to appoint a teller, the Speaker shall appoint;

That said tellers shall divide themselves into two sets as nearly equal in number as can be, and one of the said sets of tellers shall proceed to count the votes in one of said boxes, and the other set the votes in the other;

When the votes are counted by the different sets of tellers, the result shall be reported to the House, and if the reports agree, the same shall be accepted as the true votes of the States; but if the reports disagree, the States shall proceed, in the same manner as before, to a new ballot.

6th. All questions arising after the balloting commences, requiring the decisions of the House, which shall be decided by the House voting per capita, to be incidental to the power of choosing a President, shall be decided by States, without debate; and, in case of an equal division of the votes of States, the question shall be lost.

7th. When either of the persons from whom the choice is to be made, shall have received a majority of all the States, the Speaker shall declare the same, and that that person is elected President of the United States.

8th. The result shall be immediately communicated to the Senate by message; and a committee of three persons shall be appointed to inform the President of the United States, and the President elect, of said election.

The report was read and ordered to lie on the table.

THURSDAY, January 27.

*Preservation of Indians.*

The following Message was received from the PRESIDENT OF THE UNITED STATES; which was read:

*To the House of Representatives of the United States:*

Being deeply impressed with the opinion, that the removal of the Indian tribes from the lands

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which they now occupy within the limits of the several States and Territories, to the country lying westward and northward thereof, within our acknowledged boundaries, is of very high importance to our Union, and may be accomplished on conditions and in a manner to promote the interest and happiness of those tribes, the attention of the Government has been long drawn, with great solicitude, to the object. For the removal of the tribes within the limits of the State of Georgia, the motive has been peculiarly strong, arising from the compact with that State, whereby the United States are bound to extinguish the Indian title to the lands within it, whenever it may be done peaceably and on reasonable conditions. In the fulfilment of this compact, I have thought that the United States should act with a generous spirit; that they should omit nothing which should comport with a liberal construction of the instrument, and likewise be in accordance with the just rights of those tribes. From the view which I have taken of the subject, I am satisfied that, in the discharge of these important duties, in regard to both the parties alluded to, the United States will have to encounter no conflicting interests with either. On the contrary, that the removal of the tribes from the territory which they now inhabit, to that which was designated in the Message at the commencement of the session, which would accomplish the object for Georgia, under a well-digested plan for their government and civilization, which should be agreeable to themselves, would not only shield them from impending ruin, but promote their welfare and happiness. Experience has clearly demonstrated, that, in their present state, it is impossible to incorporate them in such masses, in any form whatever, into our system. It has also demonstrated, with equal certainty, that without a timely anticipation of, and provision against, the dangers to which they are exposed, under causes which it will be difficult if not impossible to control, their degradation and extermination will be inevitable.

The great object to be accomplished is, the removal of those tribes to the territory designated, on conditions which shall be satisfactory to themselves, and honorable to the United States. This can be done only by conveying to each tribe a good title to an adequate portion of land, to which it may consent to remove, and by providing for it there, a system of internal government, which shall protect their property from invasion, and, by the regular progress of improvement and civilization, prevent that degeneracy which has generally marked the transition from the one to the other state.

JAMES MONROE.

WASHINGTON, 27th January, 1825.

FRIDAY, January 28.

*Road from Detroit, in the Territory of Michigan, to Chicago, in the State of Illinois.*

The House having resolved itself into a Committee of the Whole on the bill "to authorize the surveying and opening of a road from Detroit to Chicago, in the State of Illinois"—and Mr. CLAY, (Speaker,) having invited the Delegate from Michigan to present a statement of the facts bearing on the bill—

Mr. RICHARD rose, and went into an exposi-



tion of the merits of the bill, of which the following is an abstract:

Everybody, said Mr. R., knows that the contemplated road is of the greatest importance, not only to the territory of Michigan, but also to the General Government: and the consequence is, that it ought to be done immediately. This road will connect the east of the Union with the west. The grand canal of New York will be completed next July. When the said canal is finished, we consider Detroit in contact with New York. Last fall, I was on Lake St. Clair on board a vessel built during the preceding winter, with a movable keel, ready and calculated to go down, through Lake Erie and the whole of the canal, to land at the Battery in New York.

In relation to our military operations, the utility of a road across the peninsula of Michigan, from Detroit to Chicago, is obvious. This road will afford a facility to transport munitions of war, provisions, and troops, to Chicago, Green Bay, Prairie du Chien, and St. Peter's River, &c. When our upper lakes are frozen, an easy communication will be constantly kept open, in sleighs, on the snow. Everybody knows, that, during the last war, for want of a proper road across the Black Swamp, our Government incurred an expenditure of ten or twelve millions of dollars, which would have been avoided by having a good road, made in due time. Make this road now, when you have the full sovereignty over the territory of Michigan, before it becomes an independent State, and you may easily anticipate how beneficial this road will be to your finances. There are more than seventeen millions of acres of, generally, good and fertile land, in Michigan proper, (without speaking of the ninety-four millions of acres in the Northwest Territory.) Without a road to go to those lands, they have no value. We are credibly informed, that, on our inland seas, I mean Lakes Erie, St. Clair, Huron, and Michigan, no less than one hundred and fifty vessels are plying up and down, on board of which whole families do come, sometimes, with their wagons, horses, sheep, and milch-cows; land in Detroit, ready to go in search of good land, to settle on it, and having their money ready to give to the Receiver of the Land Office. No road to go into that immense wilderness! What disappointment! During about twelve months, last elapsed, more than one hundred thousand dollars have been actually paid into the hands of the Receivers of Public Money, in the territory of Michigan, for land purchased. How much more would have been paid, if the proposed road had been made! We can learn from the Commissioner of the General Land Office, that about ten surveyors have been employed in surveying public lands in the interior of Michigan Territory, between Detroit and Chicago, during last winter. These lands will soon be advertised to be sold. If there is no road to come to them, who will purchase them? But let this road be made; let it be determined by this House that

it shall be made; then you will have purchasers enough: they will come as a torrent from the Eastern States. It cannot be questioned that the land along the intended road will sell for two or three hundred per cent. more than it would if there were no such road; and so, in nearly the same proportion, the adjacent lands will be increased in price. If you ask me what will this road cost? I beg leave to answer, it will cost nothing to the Government. I might say it will cost less than nothing. The half of the land along the road only, will, after the road is made, or determined to be made, sell for a great deal more than the whole would, without the road. What an immense profit for your Treasury you can derive from the sale of this immense wilderness, which remains entirely unprofitable, if you have no road to come at it! This road is, therefore, to be beneficial to your finances, and your military operations, and to all parts of the Union, as well as to Michigan itself; as it will afford all kinds of encouragement to the citizens of the Eastern States, who wish to emigrate to the beautiful and fertile lands of the West.

As to the amendment proposed to the 2d section of the bill, by the gentleman from Tennessee, I have no hesitation to state to the House, that the present Executive of the territory of Michigan, has, during a long residence in the said territory, acquired all requisite information and knowledge of the local circumstances; he has traversed this wilderness, on horseback, from Chicago to Detroit; he knows every foot of it. During his long administration, he has given ample proofs of his abilities; he has discharged the duties of his office so as to give general satisfaction to the people; and his attachment to the interest of the General Government is well known to all the officers of Government, and to the honorable members of this House; he is, therefore, the best qualified person to take the direction of the contemplated road. It would be even desirable that he should have the appointment of the Commissioners, and their assistants. He would find on the very spot, men who have often travelled through the said wilderness, and are acquainted with all the Indian trails which intersect it, and who, for one dollar a day, would do the work better than gentlemen appointed by the President, who might be tempted to spin out the time to increase their pay, at three dollars per day. I trust, therefore, that the honorable gentlemen of this House will pass the bill in its present shape, without any other amendment but the following, that is, to fill the blank in the 8d section with the sum of fifteen hundred dollars.

After a short explanation by Mr. HENRY, of Kentucky, to satisfy the House that a proper attention had been paid to the subject by the Committee on Roads and Canals, before they reported the bill at the last session; Mr. COOK, of Illinois, moved to fill the blank with \$3,000 instead of \$1,500, which was agreed to.

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*Creek Indian Negotiation.*

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On motion of Mr. CAMPBELL, of Ohio, an additional section to the bill was added, viz :

*"And be it further enacted,* That the Governor for the time being, so soon as the lands shall be surveyed, and the road located, under the direction of this act, shall designate the sections which are hereby appropriated, and report the same to the Secretary of the Treasury."

The committee then rose, reported the bill, together with the amendments, and it was ordered to be engrossed for a third reading.

TUESDAY, February 1.

*Creek Indian Negotiation.*

The resolution offered yesterday by Mr. FORSYTH, calling for the report of the Commissioners appointed to treat with the Creek Indians for a cession of their lands, was taken up.

Mr. FORSYTH said, as he wished to attract the attention of the House and of the public to a subject of very great interest to the State of Georgia, he would state what had been communicated to him respecting it.

The law of the last session, making an appropriation for the extinguishment of the Creek title to lands in Georgia, was founded on a document sent by the President to Congress: a letter from the Commissioners, who had been holding a talk with the Cherokees, which stated, on the authority of the Creek Indian agent, and some of the Creek chiefs, that that was a favorable time for a treaty with the tribe. After the act passed, when he could not tell, orders were given to the agent to collect them at the Broken Arrow. While this act was under the consideration of a committee, the Indian agent was in Washington, and certain Cherokee chiefs, whose treatment by the Executive, and pretensions, would be recollected. They came to protest against all appropriations to purchase lands from them, and to declare they would dispose of no more, either by sale or exchange. Not satisfied with their own success, they were disposed to extend the benefits of their negotiation to the neighboring tribes. Mr. F. understood that one of the chiefs had sent all their correspondence with the Secretary of War, &c., to the Big Warrior, advising that the Creeks should follow their example. However that might be, certain it was, that some of the Creek chiefs had a meeting at Tuckabatchee, in Alabama, near the town of Montgomery, and determined to follow the pattern of the Cherokees. Not satisfied with this, as the meeting called by the agent was to take place in November, another meeting was held by the Creeks, at Pole Cat Spring, in October, and the determination made at Tuckabatchee was confirmed, and ordered to be made public. The two documents were published as a sort of manifesto to the world that no more Creek lands would be sold to the United States. These documents were signed by the Little Prince, his mark, by the King Big Warrior, his mark; the Head Wolf, his mark, &c.; none of the persons signing the first being able to read or write, and

but one or two who signed the second. The Commissioners of the United States, on their way to the Broken Arrow, heard for the first time, of these strange papers, the Indian agent not having considered it his duty either to prevent the determinations they announced, or to communicate them to the War Department; the sub-agent, who ate the bread of the United States, was active in promoting these determinations, and was supposed to be the secretary of one, if not both the meetings. The Commissioners found the Creeks, to the number of ten or fifteen thousand, assembled at the Broken Arrow, ready to assist in consuming the fifty thousand dollars appropriated by Congress for the expenses of the treaty. Their chiefs, living in Alabama, determined not to make a treaty; the sub-agent actively employed to defeat the wishes of the Government, and the principal agent acting a part of dignified neutrality, because he had not been instructed by the Secretary of the Department of War to promote the views of Congress, no treaty could be formed, as might have been expected. Notwithstanding the manifesto of the chiefs, the hostility of the sub-agent, and the dignified neutrality of the principal, the Commissioners found twenty-four chiefs, representing all the Indians residing in Georgia, willing to remove to the west, and give up all the land occupied by them—all the Creek Indians claim in the limits of that State. These chiefs represented about ten thousand Indians, and their price, including all the expenses for their removal, was \$300,000. Unfortunately, the Commissioners did not conceive themselves authorized to make a contract with them. One of the Commissioners came to this place to ask that authority from the Executive. It was not given. New instructions had been given, and a new meeting was to be held, from which the President seemed to expect a more favorable result. Mr. F. apprehended that the present effort would not be more fortunate than the last.

Mr. F. said he felt great reluctance to state what he had been informed the Executive had directed to be done in this stage of things. He hoped that the documents might show that he was misinformed. For their insolent interference to obstruct the execution of one of the laws of the United States, the wishes of Congress, and the instructions of the Executive, the Cherokee chiefs were to be reproved by the Secretary of War. The principal Creek agent, who was a dignified neutral between his own Government and the Creeks; who thought a law of Congress, and the instructions of the Executive to the Commissioners, not sufficient to make it his duty to act with the Commissioners; he was to be reprimanded by the Secretary of War. The only decisive step, was the removal of the sub-agent. The successor of the sub-agent, no doubt warned by the fate of his predecessor, would take care to avert the conduct of the principal, and be ostensibly neutral, secretly hostile. Such were the circumstances under which Mr. F. had felt it his duty to bring the subject before the

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*Election of President by the House of Representatives.*

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House, by his resolution, adopted yesterday, and that now under consideration.

The President, in his late message to Congress, had connected the performance of the obligations of the United States to Georgia, with the great plan of collecting all the Indians in our western territory, for the purpose of civilizing them. Of this plan, it was not now proper to speak. It might be wise, humane, and politic, but Mr. F. protested against connecting the performance of the obligations of the United States, under the act of cession of 1802, with that plan. He should consider a determination to that effect as an indefinite postponement of justice to Georgia. He hoped the Committee on Indian Affairs would consider them separately, and bring the two subjects separately and distinctly before the House, whatever might be their opinions upon them.

The resolution was then agreed to without opposition.

WEDNESDAY, February 2.

*Election of President by the House of Representatives.*

On motion of Mr. WRIGHT, of Ohio, the House then resolved itself into a Committee of the Whole on the state of the Union, and took up the report of the select committee appointed to prepare rules to be observed by the House in choosing a President of the United States.

The report was read through, and then

The rules were read and considered separately. On the first rule some conversation took place between Mr. BASSETT, of Va., and Mr. WRIGHT, the chairman of the select committee. No alteration, however, was made in the rule.

The second rule was then read, and no objections were made to it.

The third rule was read, as follows:

8d. The doors of the Hall shall be closed during the balloting, except against members of the Senate and the officers of the House; and the galleries shall be cleared on the request of the delegation of any one State.

Mr. INGHAM, of Pennsylvania, moved to amend this rule by striking out the last clause, viz: "*and the galleries shall be cleared on the request of the delegation of any one State.*" Mr. I. stated that, as a member of the select committee who had made the present report, he had, when this rule was brought forward in the committee, objected to that part of it which he now moved to strike out; and he had objected then, as he did now, to the clause in question, because he apprehended that there was no good reason for putting it in the power of the delegation of a single State, (consisting, in some instances, of a single individual,) to clear the galleries of this House. He could not conceive that there was any need to go into conclave in order to conduct the approaching election. It was not a measure involving our relations with foreign nations, but a matter of a purely domestic character. Yet this rule

enforces secrecy, in regard to the transaction, if required even by a single individual, and that in the most obnoxious form. He had rather have the rule made absolute at once, and say that the galleries, as well as the doors of the House, should be closed, than to give authority to the delegation of one State to have them cleared. He was at a loss to account for such a proposition. He supposed that there must be some special reason for granting such a power, but he could not conceive what it was. Was any distrust entertained of the personal safety of members of this House? Surely, the power of the Speaker over the galleries would be as great on the contemplated occasion, as at the present moment; and the existing rules of the House clothed him with full authority to have the galleries cleared in case of disorder. Believing that no good reason existed for the clause in question, he hoped it would be stricken out.

Mr. McLANE, of Delaware, said that when the honorable member from Pennsylvania rose, he had been about to offer an amendment to the rule, in conformity with the opinion he had expressed, when in committee; and he should now acquiesce in the amendment which that gentleman had offered, provided the principle on which he himself wished to go, was adopted by the House. He was for clearing the galleries altogether, without leaving it to the delegation of any State to require that it should be done. In giving his reasons, in favor of this course, he wished it to be distinctly understood, that any remarks he might make, had no reference, whatever, to the peculiar state of things existing at the present moment. He thought the question ought to be treated as involving an important precedent, and ought to be considered on principles that were to govern on this occasion, and all others; not only now, but hereafter. He felt himself called on by his duty, to state these principles. He felt, very fully, the responsibility of his situation, and wished to assert the rights which he conceived to pertain to the members of this House, at the present moment, while the nation was in a state of calmness and quiet; a time peculiarly favorable for the adoption of rules calculated to provide for a season of great party excitement.

Mr. McL. asked, Why ought the galleries to be open? Why must this balloting be conducted in public? In electing a President, the members of the House were called to act, not as representatives of the people, but as umpires, to do that which the people have tried to do, and have not been able to accomplish. The people have tried to elect a President: they have failed to do so. The House of Representatives are then empowered to choose one for them. This power is not delegated to them by their constituents, but by the constitution: and, in exercising it, they have no peculiar relation to their constituents, and are not responsible to them, further than every honest man

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is responsible to his conscience and his country for his public acts. He should consider the question now presented as a new one, and should put wholly aside what had at any time been done respecting it. Who, asked Mr. McL., has a right to inspect my decision between conflicting claims to the Presidency? In ordinary cases he granted that the people had a right to look to the acts of their representatives, and exercise a sort of inspection over them. Yet, even this was not always permitted to them by the constitution. It provides that, in certain cases, the public eye shall be excluded, either when the subject of deliberation is of such a nature that an important public measure must be frustrated, if prematurely disclosed, or when, from the excited state of public feeling, an improper influence is apprehended, as endangering the freedom of debate. No such state of feeling existed now, but it not only might exist, and that in an alarming degree, but to such a degree as to become wholly irresistible. If the principle shall once be established, that the representatives of this people, standing on this floor to vote or to debate, are improperly to be controlled, it is in those galleries that the object is to be effected. If ever popular tumult, and a general excitement of national feeling, are to jeopardize the freedom, and endanger the purity, of this body, it is in those galleries that they will show their power.

For his own part, Mr. McL. said, he thought that, in so important an act as the choice of the Chief Magistrate of this nation, it was fit and becoming that members should be left to act from the cool dictates of their judgment, and that they alone were the judges how they ought to act. With them, the constitution had intrusted the duty, and there it might be safely trusted. Mr. McL. said that he had made these remarks from the fullest conviction of their truth. He thought that now, in a time of public tranquillity, a precedent might be set that would prove valuable hereafter. He felt great deference, also, for the precedent that had been already established in this respect. At the election of a President in 1801, this subject had been intrusted to able hands, and, after full deliberation, they had thought it expedient to admit no person as a spectator of the election but members of the Senate and officers of this House, and the election was so conducted.

Mr. BUCHANAN said he rose with diffidence to express his opinion upon this subject. Like his friend from Delaware, (Mr. McLANE,) he disclaimed the intention of making any remark which might have an allusion to the peculiar situation of the members of this House, in regard to the approaching election. He considered the present to be a question of great importance, and that its decision would establish a precedent, which, in future times, might have a powerful influence upon the interests of this country. He was sorry to say he had arrived at a conclusion in direct opposition to that of his friend from Delaware, (Mr. McLANE.) The

reasons which had led him to that result, he would state to the House.

The American people, said Mr. B., have a right to be present and inspect all the proceedings of their representatives, unless their own interest forbids it. In relation to our concerns with foreign Governments, it may become necessary to close our galleries. Our designs, in such cases, might be frustrated, if secrecy were not, for a time, preserved. Whenever there shall be disorder in the gallery, we have also a right to clear it, and are not bound to suffer our proceedings to be interrupted. Except in these cases, he at present could recollect none which would justify the House in excluding the people.

In electing a President of the United States, said Mr. B., we are, in my opinion, peculiarly the representatives of the people. On that important occasion we shall, emphatically, represent their majesty. We do not make a President for ourselves only, but also for the whole people of the United States. They have a right to insist that it shall be done in public. He, therefore, protested against going into a secret conclave, when the House should decide this all-important question. He said that the doctrine of the gentleman from Delaware (Mr. McLANE) was altogether new to his mind. That gentleman has alleged that we are called upon to elect a President, not as the representatives of the people, but by virtue of the constitution. Sir, said Mr. B., who created the constitution? Was it not the people of the United States? And did they not, by this very instrument, delegate to us, as representatives, the power of electing a President for them? It is by virtue of this instrument we hold our seats here. And, if there be any case in which we are bound to obey their will, this is peculiarly that one. To them we must be answerable for the proper exercise of this duty.

What are the consequences, said Mr. B., which will result from closing the doors of the gallery? We shall impart to the election an air of mystery. We shall give exercise to the imaginations of the multitude, in conjecturing what scenes are acting within this Hall. Busy rumor, with her hundred tongues, will circulate reports of wicked combinations, and of corruption, which have no existence. Let the people see what we are doing; let them know that it is neither more nor less than putting our ballots into the boxes, and they will soon become satisfied with the spectacle, and retire.

The gentleman from Delaware (Mr. McLANE) has urged upon us the precedent which now exists on this subject. Mr. B. said he revered the men of former days, by whom this precedent was established. He had good reason, however, to believe, that the intense excitement which existed at that time among the people, at the seat of Government, was occasioned, in a considerable degree, by their exclusion from the gallery. They came in crowds into the House, but were prohibited from enter-

ing the Hall. Currents, and counter-currents of feeling kept them continually agitated. New conjectures of what was doing within, were constantly spreading among them. Mystery always gives birth to suspicion. If those people had been permitted to enter, much of the excitement which then prevailed would never have existed.

It has been said that there might, and probably would, be disorder, if we admitted the people into the gallery. Mr. B. could scarcely believe this possible. He had too high an opinion of the American people to suffer himself to entertain such an apprehension. Should we, however, be mistaken, where is the power of the Speaker? Where that of the House? We can then turn them out, and we shall then have a sufficient apology for doing so. But, to declare, in the first instance, that they shall be excluded, upon the request of any one out of twenty-four States, would be a libel both upon the people of the United States and the members of this House. Mr. B. asked pardon for this expression, if it were considered too harsh.

Mr. B. said he knew well his friend from Delaware was willing that all his conduct, in regard to the Presidential question, should be exhibited before the public, and that it was principle, and principle alone, which had suggested his remarks.

That which gives this subject its chief importance, Mr. B. said, is the precedent. He was anxious that it should be settled on sure foundations. If the rule, in its present form, should be adopted, it may, and probably will, be dangerous in future times. At present, our Republic is in its infancy. At this time, he entertained no fear of corruption. In the approaching election, it can therefore make but little difference, whether the gallery shall be opened or closed. But the days of darkness may, and unless we shall escape the fate of all other republics, will come upon us. Corruption may yet stalk abroad over our happy land. When she aims a blow against the liberties of the people, it will be done in secret. Such deeds always shun the light of day. They can be perpetrated, with a much greater chance of success, in the secrecy of an electoral conclave, than when the proceedings of the House are fully exposed to the public view. Let us then establish a precedent, which will have a strong tendency to prevent corrupt practices hereafter.

Mr. B. concluded by observing that, whether we regard the precedent to be set, the nature of our Government, our own character, or that of the people whom we represent, they all conspire to induce us to adopt the amendment.

Mr. LIVERMORE, of New Hampshire, thought there was no necessity for any further rule in relation to the galleries, than that which now existed. Provision was already made to clear the galleries whenever the House thought proper. This was sufficient. Why should a majority of all the members surrender this power to

the delegation of a single State? He saw no reason. Why, asked Mr. L., are gentlemen so much alarmed? He was persuaded that no more disorder was to be apprehended from the gallery, in conducting an election of President of the United States, than in choosing a sergeant-at-arms for this House. For himself, he hated all mystery. He considered it a characteristic attendant of tyrannical Governments, and he thought that the proposal to conduct this election in secret, was a proof that we were not yet quite divested of certain old notions, which our ancestors brought with them from the other side of the Atlantic. He hoped that all that would be done, on this occasion, would be done in a plain, manly, simple, republican manner.

Mr. WEBSTER, of Massachusetts, would say a few words on the question, premising, that more importance seemed to be attached to it than he thought belonged to it. He presumed no practical inconvenience would arise, whether the motion prevailed or not; and yet, perhaps, it might be well to consider the subject duly, as, hereafter, possibly, the question might be of consequence. He did not see any particular benefit arising from providing that the galleries should, at all events, be open. There could be no debate when the House was proceeding in the election; and the voting must be by ballot. There was nothing to be done or said, but to give the ballots and count them. Something had been said of the superintendence which the people might exercise on this occasion, if the galleries were open. That was what he did not exactly understand. The people of the United States would hardly be in the gallery. Some hundred or two of the inhabitants of this city, those who should get up earliest, and get seats first, would be accommodated in the gallery, and others could not get in. He believed that he himself, finding some difference of opinion in the committee, upon the former rule, had suggested this modification. He was entirely willing the galleries should be open; and yet he was entirely willing to have them closed, if any State desired it. And, particularly, as it would be very inconvenient to discuss and settle these questions, after the House had begun to act as States, it seemed to him reasonable to make provision, beforehand, for this, as for other cases. He regretted both that the gentleman from Pennsylvania wished to expunge the rule altogether, and that the gentleman from Delaware wished to shut the galleries altogether. He thought the rule would do very well as it stood. It should be considered, that in some cases, very many persons were to express the voice of a State; in other cases, a single individual. Now, if either a numerous delegation, or a single individual representing a State, expressed a wish that spectators should not be admitted to the gallery, he was willing to indulge that request—so much the rule provided, and no more. He repeated, however, that he thought a very un-

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suitable and disproportionate importance might be given to this question, which he should much regret.

Mr. WRIGHT, of Ohio, said that, individually, he had no objection to the amendment. If it were required to give publicity to the proceedings of the House, upon this subject, he should certainly favor it, because he was generally of opinion the affairs of the Government should be conducted openly in the face of the world, as he considered the Government as resting on the will and information of the people. But, Mr. W. said, in the discharge of the duties now to be undertaken, we ought to look to a future time, when the country shall be in a state of excitement, that shall reach and affect those in the galleries, and thence operate on the House. It will be recollected that the only time at which this House had heretofore exercised the power of electing a President, it had been solemnly decided the doors should be closed, except as to members of the Senate. That determination was not made without deliberation, but upon solemn debate, and by a vote by yeas and nays. Mr. W. said he felt, in some measure, the influence of that precedent, and had never heard any objection to the *mode of conducting the balloting*s on that occasion.

In reply to those who seemed to suppose it impossible that any disturbance should take place in the galleries, Mr. W. said he had an exalted opinion of the virtue and intelligence of the people; but we need not shut our eyes upon the evidence before us, and we need not go further back than one year for a most glaring instance of excitement and disorder in the gallery of a Legislative Hall of one of the States of this Union, while the Legislature were transacting business relating to the very election, the determination of which is now devolved on us by the constitution; and perhaps, he said, it would not be going too far to say that excitement might be feared now. Gentlemen seemed to suppose that, by closing the doors, an injunction of secrecy was imposed on the members and officers of the House, in regard to the proceedings, and that the whole were to remain secret. That, Mr. W. said, was not the case—the rule proposed no such thing: publicity could easily be given to every thing done. The journals were free for inspection, and it was surely safer to rely on them, than reports from the galleries. It had been well observed by the gentleman from Massachusetts, (Mr. WEBSTER,) that all the proceedings relating to the election, were to be without debate; that, besides the ballotings, all were conducted by motion, second, and decision. This being the case, the results were all that could be communicated to the people in the galleries, and they would be as well communicated at the doors of the House. All that those in the galleries could see or hear in addition to the results, would be the mechanical operation of dropping the ballots into the boxes, and lifting them out again. I, said Mr. W., would vote as readily against the im-

position of an injunction of secrecy, on the proceedings relating to the election, as the gentleman from Pennsylvania, (Mr. INGHAM,) or any other gentleman on this floor; but I cannot admit that any such proposition is embraced in this rule as it stands.

Sir, said Mr. W., it is not the people of the United States, the sober, thinking people, that will be found in your galleries on such occasions; no, they are at home, attending to their farms, their merchandise, their various other avocations; they will not assemble in the galleries, or be hereafter affected by the precedent you establish. It will be the artful, intriguing, designing politicians, from various parts of the country, to witness, and if it can be, to exert an improper influence over your proceedings, and these I am not very solicitous to accommodate.

I hope, sir, the amendment will not prevail, and that we shall not, against the wish of any one State, keep the galleries open for the exertion of undue influence, or to place members in a situation where any one can suppose they are unduly operated on.

Mr. ROSS, of Ohio, observed that, according to his understanding of the proposed rule, if it was adopted, the proceedings of the House would remain, at least for a time, completely in the dark. The demand of a single State, not even seconded by another State, was to be of itself enough to compel the House to clear the galleries. Why was this rule to be adopted? The only reasons he had heard advanced were, that the House must go into this conclave from a fear of interruption—interruption, not from themselves, but from the people in the gallery; that the people of the United States were not to be expected to be present here, and that those who attended in the gallery would be such as were not entitled to any consideration. This, according to his understanding, was the sum and substance of the reasons adduced in favor of the rule. But, for himself, he believed that the people of this country understood the rules of decorum as well now as they did when the constitution was formed, and that there was no more danger of disturbance now than then.

Whether gentlemen sat here as umpires or arbitrators, or as the representatives and organs of the people, was a question on which he certainly had an opinion, but which he did not consider it necessary at present to discuss. But, whether acting in one or the other capacity, he could not see why the gallery should be closed. The House had the power already to remove from it disturbers of the peace, and, if gentlemen meant so to conduct as to meet the approbation of their own consciences, they had no reason to fear those who would be in the gallery. And, if they were not afraid to have their conduct judged, why close the doors? All seemed to agree that no dangerous excitement existed at present. Was it, then, to be got up in two or three days, and to such a

height as to threaten the safety or independence of the House? For himself, he could wish not only to have the people present, but that the votes of all the members were to be given *viva voce*. He regretted that there was any *ballot* at all on the question, and was utterly opposed to all closing of doors.

Mr. HAMILTON, of South Carolina, observed, that he felt desirous of detaining the committee a few moments in offering a remark or two on the subject before them. It seems to be a well-settled conviction that it is a great public misfortune that the election of a Chief Magistrate should devolve on this House; and he would go further and say that, in so devolving, it was perhaps a still greater misfortune that the choice should be made by secret balloting in the several and separate States, which, by its nature, precluded the public knowledge, which the people ought to have, of the votes of their representatives, on a question so vitally interesting to them, and under sanctions so solemn and imposing. For one, he was free to confess, as the people were precluded by the very form of election, from this species of knowledge, he was disposed to let them in as spectators to whatever might pass in relation to the exercise of this great trust; and in making this remark, he concurred cordially with the gentleman from Ohio, in wishing that, in spreading all our acts and doings before the public eye, during the approaching contest, we could likewise subject each delegate to the direct responsibility of a *viva voce* suffrage. This being impossible, he was disposed to consider the assembly of such citizens as thought proper to come into our galleries, as curing, in a slight degree, the defect of which he had spoken, in the mode of election. They would have a contemporary opportunity of witnessing the vote of each State, and thus, information, which it was right and proper that the people should have, would be promptly disseminated, in a form, he thought, better to keep the public mind quiet, than those thousand rumors and suspicions which naturally belong to mystery and concealment.

The gentleman from Delaware, however, meets this subject at its threshold, by asking "what right any man has to go into the galleries to see what is doing in regard to the election of a President?" I answer, because that man happens to be one of the people, for whom we are acting, and for whom we are choosing a Chief Magistrate; and because he has precisely as much right to witness the election in question, as any act of ordinary legislation; and according to the theory of this democracy, it is infinitely more expedient that he should witness the one ceremony than the other. Mr. H. said that he thought the popular eye would have a salutary influence in repressing any indecorum and violence, to which, in moments of peculiar agitation, the House, constituted as it was, was perhaps even more liable than the spectators in our galleries. They are fortunately exempt from many of those strong

biases of favor and antipathy which may lamentably exert an influence within this bar.

The gentleman from Delaware does not affirm that there is any danger at this time, in admitting our fellow-citizens into the galleries; but he contends that, at a future period, this House might be subject to intimidation from the violence of a mob, who would assemble to witness the scene, to which we are shortly to be summoned. Sir, when that day of profligate violence arrives, the atrocity of which cannot be put down by the force of public opinion—when a corps of such desperadoes are permitted, for an instant, to exercise such an influence, all spirit will have departed from this House, and all purity and moral worth from the people; and the forms we may cherish here, will be but a solemn mockery. When a few hundred persons, scarcely equal to our own numbers, convened in those seats, can successfully exercise acts of intimidation on the representatives of ten or twenty millions of people, to an absolute reversal of their sovereign will, it may be well imagined that the energy of the Government, and public virtue, are buried in a common grave. The argument, if it is worth any thing, could be urged, to show that it is expedient that we should even legislate in the conclave of a Turkish divan. The truth is, that many subjects of ordinary discussion, and common legislation, are better calculated to produce popular excitement, than the election of a President by this House. During the former, popular prejudices, and, I may say, the feelings of public vengeance, may be addressed, by the arts and electricity of popular eloquence. In the latter, our business is confined to one act, that is, in placing for our ourselves, or having it placed for us, a small strip of paper, on which the name of an individual shall be written. The ceremony precludes the possibility of debate, and almost the only motion which can be put, is, one that will have relation to the period when the act of balloting is to be renewed, on the contingency of continued failures to elect. It is impossible to conceive, in the forms of the transaction itself, fewer circumstances calculated to provoke popular violence and commotion. Besides, said Mr. HAMILTON, I think the very habits of our people forbid any apprehensions, either present or future; and, however little consoling it may be to the pride of some, he thought there was as much honesty outside of the walls of our House, as there was within them. He supposed that the individuals who would at present, and in times to come, occupy the seats in our gallery, would, a majority of them, be citizens of this District, whom he believed were as exempt from the character of corrupt intriguers, and noisy brawlers, as the people of any section of our country, although the gentleman from Ohio (Mr. WRIGHT) seemed to think that our spectators, whenever we have a President to elect, must consist of the very worst, and most abandoned species of our population. For my-



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self, said Mr. H., satisfied that no precedent we shall now establish will be binding, and that posterity will have the same right that we have, to take care of themselves, and being equally satisfied that the ordinary power possessed by the Speaker, to clear the galleries, in the event of occasional disorder, meets all the exigencies of the present crisis, I hope that every citizen of this land, let him come from where he will, may be allowed to witness an event, in which he has precisely as great an interest as we have ourselves: more particularly, when his presence can, in no degree, impair a sound and efficient exercise of the agency we have to exert.

Mr. H. said he would, before he took his seat, notice one or two remarks which fell from the gentleman from Delaware, (Mr. McLANE.) This gentleman, in a very manly declaration of the course which he intended to pursue in the approaching election, has thought proper, as furnishing the best illustration of the principles which should govern him in that course, to affirm that he does not feel himself bound, by the wishes, either expressed or implied, of the people whom he represents on this floor, and that he was in no greater degree responsible to them, than to the rest of the country, for the selection which he should make of the person for whom he should vote to fill the Presidency. It is not my business, said Mr. H., to quarrel with the principles or the opinions of the gentleman from Delaware, for whom I have personally great respect, but, nevertheless, I hope I may be pardoned for venturing to express my own. The first obligation which a human being owes, is to his own conscience. If this monitor tells him that a candidate for office is dishonest and unworthy, no human power ought to compel us to vote for him. But, whilst I lay down this primary principle thus broadly, I am as equally satisfied, that, in the present election, which belongs peculiarly to the people, which has come to us on a forlorn and disastrous contingency, that, if we have no moral objections to the person whom, among the candidates, is preferred by the particular people we represent here, we are bound to surrender our mere personal preferences and prejudices, and to endeavor to carry into effect their honest, reasonable wishes. This position harmonizes with the whole theory of our representative democracy; and, to suppose that an agent of the people is absolved from all deference (and he might almost say obedience) to their obvious wishes, by the mere circumstance of our being organized into States for this exclusive purpose, is at once to sap those great foundations of responsibility and control on which our entire system rests. In a word, he thought the true rule was in a very narrow circle, which was, that, after satisfying our own consciences, the next best thing was to gratify the reasonable and honest purposes of those who send us here.

Mr. H. said that the gentleman from Dela-

ware, in urging the House to adopt the rule for the exclusion of spectators from the gallery, during the election, had relied, with no ordinary emphasis, on the precedent which had been established by the Congress of 1801, in the celebrated, he could not say *nefarious*, contest between Mr. Jefferson and Mr. Burr. As this part of the gentleman's argument he puts on the ground of *authority*, and not *reason*, he would venture to hint that he (Mr. H.) had some serious misgivings that people would not look to those times as furnishing the instructive examples of public freedom; for, he believed, it would be susceptible of proof, by referring to the journals, that most of those who voted then for the proposed exclusion from the galleries, were those who had most strenuously supported the Alien and Sedition Law. He did not make this allusion for the purpose of throwing a firebrand into the House, but he appealed to it as an historical fact.

In conclusion, Mr. H. said that he really hoped that no groundless apprehensions would induce the House to retain a rule, which, by the mystery which would be incident to its enforcement, would beget a thousand times more excitement than if our galleries were thrown open to the whole world.

Mr. McLANE again rose, not for the purpose of entering at large into the debate, but merely to correct some misapprehensions which appeared to exist, in relation to the remarks which he had at first submitted. It was certainly far from his intention either to stir up old embers, or to brighten any existing flame. Far less was it his intention to advocate any rule which had for its object the concealment of his own course of conduct, in regard to the election of President. He neither had nor could have any concealment on that point. His opinions at all times, and in all circumstances, had been openly known, and he meant that they always should be. If he even desired concealment, he could not effect it—he stood here with no colleagues. The vote he was about to give must be publicly known, and, whenever it was given, it should be given with a single eye to the interests of our common country. Could there, indeed, be any concealment in the matter? Did not every member of this House know how his own colleagues intended to vote? And would he not disclose that knowledge? But to whom? To the persons in the gallery? Could *they* discover, while the act of balloting was going forward, for whom those ballots were given? Certainly not. He should not, for his part, denounce the arrangement made by the constitution on this subject. *Viva voce* might be a very good mode of voting for President, but, whether good or bad, was not now the question. It was not the mode which the constitution had prescribed. He again repeated, that his object was not to effect any concealment, for himself or for others. The course which each member would pursue, would be well known to this House, and it



would be known to the country in time to correct it, if erroneous.

But his object, Mr. McL. said, was to prevent the exertion of an influence which, at some period hereafter, might operate to warp and swerve members from the conscientious discharge of their duty. It was wholly on the ground of precedent that Mr. McL. was desirous to record his vote in favor of this rule. Surely, no gentleman, who knew any thing of history, could need any arguments to convince him how tremendous such influence as that which he deprecated, might easily become. Nor was it hard to say how it might be got up. A county meeting is held; votes are passed, approving or disapproving the anticipated conduct of a representative in this House, and directing him what course to pursue. And if the affair stopped here, there would be no danger. But it might go further; constituents may be brought to the scene of action, with the intent of intimidating and overawing the members of this House. The time might come when this would happen, though it may not now; and, if the gentleman from South Carolina shall then live, and cast his eyes on such a scene, Mr. McL. was persuaded that he would do justice to himself and to his motives on this occasion. That gentleman says that the people have a right to know what is done in this House. Sir, said Mr. McL., I agree with him that they have. He says further, that he cannot go with me in the doctrine that our constituents have no right to control us in the vote we are about to give for President. But, for myself, I am free to say, that, however I respect the opinions of my constituents in all cases of ordinary legislation, in this case I do not know them; I act as a judge and an umpire. I know perfectly that great respect is due to public opinion, when fairly expressed. But even public opinion, if, in my conscientious belief, it has run wild or gone astray, shall not govern me.

The constitution has imposed it on us as a duty, to choose a President, when the election by the people fails. Now, if my constituents have a right to instruct me, in this respect, the constituents of the gentleman from South Carolina have an equal right to instruct him, and so have the constituents of each member of this House. And, if gentlemen are bound to obey, and the country remains divided, the result will be, that this House cannot choose a President, any more than the people can. The last remedy provided by the constitution fails, and all those evils rush upon the country at once, which are the obvious result of such failure. It is expressly to guard against this, that the constitution provides, in the resort to this House, a tribunal which shall be perfectly independent, and above popular control.

When up before, Mr. McL. said, he had referred to the precedent of 1801, as bearing upon the present case. In answer to the argument drawn from it, the gentleman from South Carolina had denied any weight to the precedent,

because it was derived from the administration of the Government by the Federal party. Mr. McL. expressed his regret that any thing should have fallen from that gentleman, which might have a tendency to revive animosities which, for the happiness of the country, ought never to be disturbed. But, he said, if this subject was to be introduced, he was willing to meet the gentleman from South Carolina. The precedent he had referred to, was a precedent set in party times, and of the Federal party. But, said Mr. McL., it does not, because it is a precedent of the Federal party, come to me with less title to respect. Is this the only precedent of that party? It is the precedent of a party, says the gentleman, capable of enacting the alien and sedition laws. True, it is: and it is the precedent of a party which organized this Government, which put it in motion, after building it up, and established the policy, which, wisely cherished, had made this nation, at this day, prosperous at home, and respected abroad. It is the precedent of that administration, to the wisdom of which, time, which tries all things, was fixing its seal. It is a precedent of the same party that established the judiciary, built up the navy, created an army, and laid the foundations of the system of national defence, which has afforded to us security at home and protection abroad. After copying from that party all these measures of national glory and prosperity, why will not the honorable gentleman receive from it also this precedent, which has the same motives, and the same great objects in view? In all other cases, the Federal party consulted the true interests of the country; and their measures were calculated to subserve them, or it has been folly to adopt them. In the case now brought into precedent, they had the same objects in view; and the gentleman will find, if he adopt their policy in this respect also, he will reap the fruits of this, as he has done of other precedents set by them.

Mr. FLOYD, of Virginia, said he had no disposition to say much on this subject; but, holding the opinion, which he did, of the most deliberate character, that, not only on this subject, but on all others, there should be no secrecy whatever in the proceedings of the Government, he was not disposed to vote on this question now, without saying a few words. He was not disposed to set a precedent now, to be governed by hereafter in a state of excitement. Is there any excitement now? The opinion of every member of the House, in regard to the Presidential Election, is made up decidedly and distinctly, and can be expressed in open sitting, as well, and no doubt as honestly, as if our doors were closed; and I was sorry to hear the gentleman from Delaware say, that the presence of persons in the galleries could have no effect on his vote: for I am sure there is not a man in the United States who would suppose such a declaration from him necessary.

In reply to the argument that but a few per-

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sons, who were industrious enough to get up soon, would be able to obtain admission into the gallery—Mr. F. asked, if so, why should any gentleman wish to close the gallery? Let them indulge their curiosity in this particular—he saw no objection to it. Nor could he agree with the gentleman from Ohio, that intriguers would be always up in the galleries—for that was not the place for them. The gentleman had also reference to a late occasion, not more than a year ago, growing out of this very election, in which there were some symptoms of dissatisfaction in the galleries. [Mr. F. here was going to remark on this illustration, supposing it had reference to the meeting at the Capitol on the night of the 14th February last, but Mr. WRIGHT intimated that that was not the incident to which he referred.] Mr. F. continued. Poor King Caucus having been so much abused and spoken of, sir, I thought the gentleman might have referred to that occasion, where I was myself present—for, sir, I was one of that respectable body, and I am yet proud of it. If, however, he meant not to refer to that case, I will refer to a case, the excitement of which, probably in this House, and in the galleries, and out of the House, never was, and never can be, exceeded. I allude to the Missouri question—during the arduous and protracted discussions of which, no disturbance proceeded from the galleries. I am not, therefore, for setting a precedent now, in anticipation of what has never yet happened. If, sir, the Representatives of the people, in their capacity of individuals, or acting by States, are capable of being operated upon by disorders in the galleries, it is high time for us to go home. But I apprehend no disturbance. In all the trying circumstances of the Missouri question, as respectful conduct, at least, was exhibited by the galleries, as by the House itself. A year or two ago, we were three or four days balloting for a Speaker of this House. Was the election of President more important than the election of a Speaker of this House? For himself, since the amendment of the constitution, he thought the office of Speaker second in the Government. If we can elect a Speaker without any trouble from the galleries, can we not also elect a President? I would not suffer the belief to go abroad among the people from our over-precautions, that we cannot. It had been sometimes said, in reference to the movements of this Government, that the eye of Europe is upon us. Now, Mr. F. said, he would not, in the eye of this people, or of Europe, have this House look like the Conclave of Cardinals, the Council of Ten at Venice, or even the Star Chamber of England. He would have the election of a President as public as possible, and let all the people, and all the world, see all that is done. There would not, perhaps, be much to see; the ballot-box would be placed on the Clerk's table, he presumed, and the States would deposit their votes in it as called over—that was the mode of proceeding in the caucus last winter, and a more respectable

and honorable body of men, he must say, he had never known, and he had no objection to the whole world being spectators of the ceremony. It seemed that it was what happened on a late occasion at New York, that the gentleman from Ohio had referred to. Of that State, Mr. F. said—for she was a great State—he would avoid saying any thing; but, if what happened there had happened in Virginia, he should have said as little as possible of it: for the occurrence of the disturbance in the galleries of the legislative body, argued as little in favor of the body which did not suppress and punish the authors of it, as of those who disgraced themselves by making it. As he could not see any reason for secrecy, in conducting the affairs of Government generally, he was not willing to sanction it in this instance. If the Government was, as the gentleman from Delaware had suggested, strong enough for the purpose of security at home, and protection abroad, it had nothing to apprehend from disorder in the galleries of this House, its power being sufficient to enforce due respect to it.

Mr. F. said he was rather sorry, for several reasons, that the gentleman from S. Carolina should have alluded to the old Federal party. He had no doubt that, in every thing the Federal party had done, not involving its construction of the constitution, things were as well done as they are now. The error of that party was in not apportioning its legislation and expenditure to the true condition of the country. As to the elder John Adams and Timothy Pickens, he did not at all approve their constitutional opinions, and no one had been more decidedly opposed to them: but a state of things might occur, and he did not know but it had occurred, in which he believed he would take the old ones in preference to it. If the doctrines of the old Federal party were obnoxious, he did not see that those of the present day were any better. They undertook to do every thing under the clause of the constitution to provide for the general welfare; and so, said Mr. F., do we, at the present day.

One thing, Mr. F. thought his friend from Delaware had overlooked. He had said that the Federal party built a Navy. So they did, said Mr. F.,—and they sold it, too—at least, they provided for the sale of it. The next administration carried the provision into effect, for they were a law-abiding people. I cannot say as much for the present; for I read in the paper of to-day, that there is a seventy-four gun ship, built under an act expressly providing for such vessels, which is pierced to carry a hundred and two guns—the same which the President and a number of other persons have been lately on a trip of some seventy miles, to look at and admire. On another point, also, the gentleman from Delaware was somewhat defective in his statement: the federal administration did raise an army—but they also disbanded it. If that administration was to be reproached for any thing beyond an erroneous construction of the

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constitution, it was merely for the extent of their expenditure, &c., and in that extent, the latter days of this halcyon administration were as far in advance of the federal administration, as that administration was in advance of public opinion. Mr. F. concluded by saying, that, as he was against secrecy of every description in the affairs of Government, he should vote in favor of this amendment.

Mr. HAMILTON again rose, and said, that he felt it due to himself to make a very brief reply to the gentleman from Delaware, if it was merely for the purpose of assuring him that, in the allusion which he had made to the Alien and Sedition Law, that it was neither his intention nor desire to arouse from their mouldering ashes those embers of party distractions which, he thanked God, had long since passed by. Much less was it his object to fling imputations on a party, (among whom had been embraced some of the most valued and cherished friends he had on earth,) which, on a variety of occasions, had rendered services of signal and inestimable value to the country. But he would put it to the candor of the gentleman himself, to say, when he urged a measure for our adoption, on the mere ground of *authority*, whether it was not admissible for him to show that the authority, according to the popular *understanding* of the country, came rather in a questionable shape.

Mr. H. said that he should not deny, (for it would be unjust for him to do so,) that the Federal party (the very party which passed the Alien and Sedition Law) had contributed to the formation of those great and valuable institutions to which the gentleman had referred. But he believed that they were, most of them, the work of joint counsels, and a confederate patriotism, when parties scarcely had a controlling influence on public measures; and whilst he admitted that several distinguished members of the Federal party had left a large debt on our gratitude, he could not be unmindful of what such men as Jefferson, Madison, and Gallatin, had done, in giving efficiency and popularity to the form of our Government, by fixing the principles of a wise, economical, and prudent administration. He thought it, however, not a little caustic and unkind in the gentleman from Delaware, to appropriate all that had been done for the country, as the trophies of his party; if, however, these were consolations furnished after the loss of power, he surely would not deprive his friend of their enjoyment. But, after all, he had risen merely and distinctly to disclaim any intention to wound the feelings of a single gentleman on that floor, by an allusion which he thought had laid fairly in his view.

Mr. MEBBER, of Virginia, then observed, that he was very happy that the gentleman from South Carolina had made the explanation he had just given; and he expressed a hope that all party divisions and party feeling would be banished on the present occasion. He thought

that the observations of the gentleman from Delaware, himself, had shown that no great injury was likely to result from the admission of spectators. If it was really true, that the sentiments of members were not concealed from each other, the mere closing of the gallery would not operate to conceal them from the public, or materially prevent any influence from out of doors. Members were not under any injunction of secrecy, and whatever was done within, would almost immediately be known without. There was then no end to be accomplished by the rule, but solely the prevention of disorder; and the only question to be settled was, whether the rule was necessary for this purpose. Mr. M. believed it was not: he could conceive no reason to apprehend the smallest danger of it. He thought that, under the protection which they enjoyed on all other days, the House would be as free from disturbance on this, as on other occasions. As to the precedent which had been referred to, Mr. M. made some remarks, which, from his position in the House, the reporter but imperfectly heard.

Mr. WEBSTER said he was afraid that an observation by the honorable member from Ohio, apparently made in allusion to his remarks, might lead to misapprehension. He had not intimated that the gallery might be filled by persons not entitled to consideration; no such thing. He only spoke of its size, and then only in consequence of the argument that the people of the United States might, from the galleries, superintend the votes of their Representatives. Superintend, he believed was the word. His honorable friend from Virginia, (Mr. FLOYD,) seemed, in like manner, to have misapprehended him in this particular.

Even if the galleries should be cleared during the proceedings, at the request of a State, there would still be no propriety in speaking of the proceeding as done in conclave, or as kept secret from the people. The journal would be published daily, as usual. There would be no injunction of secrecy. It was a mere question about the orderly and decorous proceeding—the police, as it were—of the House. As to the supposition that any gentleman wished to conceal his vote, or to act secretly, there was no one who supposed such a wish to exist anywhere. He was willing, every member was willing, that his vote should be known to everybody. He had known questions which he thought as important as this. He might again. The occasion, however, might attract a multitude, and the object was to secure order, and freedom from restraint.

The gentleman from Virginia had objected to voting on questions of adjournment, &c., by States. But it would be seen at once, that, as the election was to be made by States, every question fairly and really incident to the choice, ought to be decided also by States. The constitution said the House should *immediately* elect a President. On the former occasion, the rule

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was, that the House should proceed, without interruption from other business, and without adjournment, to choose a President. But the latter part of the rule was found impracticable, in fact, and avoided afterwards, by voting on one day, that the next balloting should not take place till the next day. So that all the members were, in fact, quietly sleeping in their beds, while the House, according to the journal and the rule, was all the time sitting. The vote to postpone the balloting, from time to time, was, on that occasion, taken by States. The committee had thought proper, on this occasion, to recommend that the House might adjourn on the vote of a majority of States.

He again hoped that too much importance might not be attached to this question. He had no fear of any great inconvenience either way. He saw no question of principle in it. It was a question of expediency; and he remained of opinion, that the rule prescribed a fit course, upon the whole, to be followed. He certainly was not likely to request the gallery to be cleared; but if any gentleman, or gentlemen, representing another State, should make such a request, he thought it ought to be granted. And, therefore, he approved the rule, in its present state. He would state again, and would particularly request the House to consider it, that there might be inconvenience and embarrassment, if this question were left to be decided, and should arise, after the House had commenced the proceeding, when it must act by States and without debate. To prevent such possible inconvenience and embarrassment was one object of the rule.

Mr. WRIGHT said, that, before the question was taken, he wished to correct the misapprehension of the gentleman from South Carolina, (Mr. HAMILTON,) as to the remarks he formerly made in relation to the kind of people that would crowd the galleries on occasions like the one contemplated. If I understood him aright, (said Mr. W.), he supposed me to assert that none but the profligate and worthless people of this district would be found in the galleries, and that I considered none of them worthy a place there. Sir, I am not aware that I said anything of the people of this district or city; and if I did, I never could have uttered sentiments so entirely foreign from my feelings as those imputed. I did say, however, that those who would crowd the galleries on such occasions, would be the unprincipled and profligate politicians of the country, ready for the exertion of any influence, however improper and desperate, to effect their object. In this, sir, the people of this city or district were in no way implicated, and I protest against the gentleman's carrying these declarations into any account against them. Among my acquaintance in the city and district, I am proud to rank many for whom I entertain a respect not surpassed by any felt by the gentleman himself, for them, or any other persons whatever.

The gentleman from Virginia (Mr. FLOYD) has said, in allusion to what fell from me, that

the intriguers will not make the galleries the theatre of their operations. No, sir, not altogether. I concur with the gentleman in part; but when they have exerted their influence out of doors, and accomplished all within their power there, they will then take possession of the galleries, to observe its effect and operation here.

A word, sir, as to the motion. It is to take from the delegation of a State the power to clear the galleries. In ordinary cases, the Speaker, or any member of the House, can do it. When we assemble to ballot for President, we lose our individual character, and proceed as the representatives of States, acting only as States; and I can see no danger in giving to the representatives of one sovereignty the power to clear the galleries. It is but a mark of respect to him, and, in my opinion, it is peculiarly fit and proper that he should have the power to exercise, if the occasion called for it.

Mr. McDUFFIE, of S. C., observed, that as, in the course of the debate, principles had been advanced, against which he must protest, and against which he intended to vote, he was desirous of giving the subject some discussion, which the lateness of the hour would not, at present, admit him to do. He therefore moved that the committee rise.

The question on rising was put accordingly, and *carried*, ayes 89—noes 71. So the committee rose, and obtained leave to sit again.

THURSDAY, February 3.

*Election of President by the House of Representatives.*

On motion of Mr. WRIGHT, the House went into Committee of the Whole on the state of the Union, and again took up the report of the committee appointed to prepare rules to be observed, by the House, in the election of a President of the United States. The question recurring, from yesterday, on the motion of Mr. INGHAM, to strike out the last clause of the third rule, which directs that the galleries shall be cleared on the demand of the delegation of any one State—

Mr. McDUFFIE rose, and addressed the House as follows:

Mr. Speaker: If I could agree with the honorable member from Massachusetts, (Mr. WEBSTER,) that this is a proposition of inconsiderable importance, I certainly should not ask the committee to bestow any portion of its attention upon any remarks of mine. It is true, that the proposition immediately under consideration, is apparently of but little moment; but when we advert to the principles involved in it, and the consequences which may flow from it, I consider it a subject of very great importance. We have been correctly told by the gentleman from Delaware, (Mr. MOLLANE,) that this question derives its importance, principally from the consideration, that our decision will constitute a precedent for future times; and we are distinctly called upon to adopt the

proposition *now*, not in reference to existing circumstances—not with a view to obviate any anticipated disturbances in the gallery during the approaching election—but for the disinterested purpose of providing a precedent, for the security of those who are to come after us. A little consideration, I think, will satisfy the committee, that the strongest objection to this measure grows out of the fact, that it will be regarded as a precedent. If, indeed, it be a matter of small importance; if we have no cause to apprehend immediate danger; if no fears are entertained that our proceedings will be disturbed or overawed by any injudicious exhibition of excitement or violence, on the part of those who may behold them from the galleries, why should we adopt the proposition? Whence this extraordinary providence for the security of our successors? Why should we thus gratuitously provide for dangers that may never occur? Will not those who shall occupy our places in future time, be capable of providing for the tranquillity and safety of their own deliberations? If in any future emergency there should be indications that our successors will not be permitted to exercise the most unbiased freedom of deliberation, in performing the important function of electing a President, will the precedent we are called upon to establish be necessary to enable them to guard against the danger? Will they not have the same power then, that we have now? But let us look at the other side of the question. What will be the effect of the adoption of this rule? It is one of those propositions which can only be correctly appreciated, by taking into consideration principles which may seem to be remotely and almost imperceptibly connected with it. What, then, are those principles? Sir, we can be at no loss for an answer to this question. The honorable member from Delaware, with that candor and independence which always characterize his deportment here, comes out boldly and manfully, with a distinct avowal of the principles upon which he rests the defence of the proposition to clear the galleries. We are told by that gentleman, that the people have no right to inspect our conduct here, in regard to this great subject, the election of a President of the United States; that we owe them no responsibility for our conduct in the discharge of that duty, and that they have no right to—

[Mr. McLANE here rose, by leave, to explain. If, said he, I understand the gentleman as referring to any remark made by me, he has certainly misapprehended my argument. I disclaim any intention of withholding from the people of the United States a knowledge of our proceedings here. The people have a right to know, and they shall know them. The argument for which I contended was this: That the immediate constituents of a member of Congress have no right to instruct him in relation to his vote in the election of a President: that he is wholly independent of his constituents in giv-

ing that vote, further than the responsibility which a high-minded and conscientious man feels in discharging a solemn duty devolved upon him, and his ultimate responsibility. I freely admitted, that the will of a majority of the people of the United States was entitled to great respect, not to be easily put by, but not of imperative authority, on this question.]

Mr. McD. resumed. I gave way, with great pleasure, to allow the gentleman from Delaware an opportunity of explaining; but I do not perceive that his explanation has materially varied the doctrines I have ascribed to him. It is certain, however, that I have not misrepresented the argument used by that gentleman yesterday, for I have before me his very words, taken down as he uttered them, to which I now call the attention of the committee. "We are called upon," said he, "to act here, in voting for a President, not as the representatives of the people." "We are not responsible to the people," and he asked, "Who has a right to come here, and superintend or inspect our proceedings?" These are the precise words used by the gentleman from Delaware; and, construe them as he may, they convey doctrines against which I feel bound to enter my protest. This rule, supported by these arguments, involves the idea that, in the election of a Chief Magistrate of the nation, we act here wholly independent of the people, and are under no obligation to regard their will, however solemnly expressed and certainly ascertained. What would be the impression carried down to future times, by the adoption of this rule, under the existing circumstances? If the question had been taken without argument, and the rule adopted, various opinions would be hereafter entertained as to its principle and its objects. It might be regarded as a mere matter of police. But, after what has occurred, if it were now to be adopted without some protest against the principles upon which it has been vindicated, what would be the consequence? It would become a precedent for times less pure, perhaps, than the present, and would be expounded by the argument of the gentleman from Delaware. We should thus contribute to consecrate principles, which I am sure this body would never intentionally sanction. Are we not bound, therefore, by the highest considerations, not only to reject the rule, but to set the seal of our solemn reprobation upon the arguments by which we have been urged to adopt it?

But, let us for a moment inquire into the pernicious uses to which this rule may be applied, as a precedent; the only view in which its advocates regard it as of any importance. Whatever confidence I may have in the purity of the present House of Representatives, I cannot close my eyes upon the probability that its members will not always be elevated above the reach of corruption. Suppose, then, that some future House of Representatives should resolve to elect a President from corrupt motives, such as would certainly expose them to the execra-

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tions of an indignant people: How would they proceed? Their first step would be to close the galleries, and exclude the public eye from an immediate view of their proceedings. But would they stop here? No, sir; they would have it in their power to cover their conduct with a veil of impenetrable and eternal mystery, by laying upon the House an injunction of secrecy. Nor would the temptation to adopt such a measure, be greater than the facility of its adoption. By the rules reported, the House acts by States on all questions incidental to the election. There are six or seven States represented here, upon an average, by little more than a member each, and thirty or forty members, representing a majority of States, could, by co-operation, decide any question. And thus would you place it in the power of a small and corrupt minority, to screen their conduct forever from the view of those to whom they are responsible. If, as we have been told, we are to establish a precedent for times less pure than the present, let us not put an instrument into the hands of the unprincipled and ambitious, by which they can most effectually consummate their corrupt and nefarious purposes.

Let me now solicit the serious attention of the committee, to the extraordinary doctrine avowed by the gentleman from Delaware. Are we, indeed, independent of the people of the United States, in the exercise of the high trust of electing a President? Do we cease to be their representatives, when we resolve ourselves into an electoral college, to perform that function? Are we to make a selection without reference to their will, however solemnly and constitutionally expressed? Are we to assume the character of independent judges, acting for ourselves, and not for the people? I will attempt to establish the negative of these questions. There are many of our public men, who stand high in the estimation of the country, and who have made a distinguished figure in the service of the republic, who maintain that, even in our legislative capacity, we are bound to yield implicit obedience to the known will of our constituents, however ascertained. A signal instance of the practical recognition of this principle, was exhibited some six or eight years ago, in relation to the celebrated compensation law. That measure, by which the members of Congress provided for the increase of their own pay, produced a degree of popular excitement and dissatisfaction, which no question, of the same apparent magnitude, had ever produced before. And what was the consequence? The same Congress, at the very next session, almost before the members were warm in their seats, took steps to repeal the obnoxious law; and a majority of those who voted for its repeal, avowedly did so, against their own deliberate convictions, because it was the known wish of their constituents. But, sir, there is a plain and striking distinction between the relation we bear to our constituents in discharging the ordinary functions of legislation, and that which

we bear to them, in performing the extraordinary electoral function of choosing a President.

My own opinion always has been, (and I should be unworthy the seat I occupy, if, entertaining that opinion, I were now to conceal or suppress it,) that, in matters of general legislation, the representative is not absolutely bound by the will of his constituents, because he is bound by the still higher and paramount obligation of the constitution itself. By that instrument, "all legislative power is vested in Congress." Now, what is legislative power? What does the term "legislation" necessarily involve? Inquiry, investigation, argument, deliberation, are its essential elements. The delegation, therefore, of the power to legislate, is, from the very nature of the function, the delegation of a discretionary power. If we are sent here to inquire, to investigate, to argue, and to deliberate; the laws we pass should, of course, be the result of these mental operations. But what is the nature of the trust which we are about to perform with closed doors, under the idea that we are under no responsibility at all to the people, for the manner in which we may discharge it? Is it a power which, like that of legislation, the constitution supposes the people to be incapable of performing? Precisely the reverse, sir. The Constitution of the United States, both in theory and practice, distinctly involves the idea, that the people of the United States are *not* capable of making laws, but that they *are* capable of making a President. That constitution provides that the President shall be elected, if possible, by the people. The primary effort to make a choice is made by the people. This, then, is obviously the favorite mode of the constitution, for the election of the President. As, therefore, the constitution assumes that the people are capable of making this election, and prescribes the mode in which their will shall be expressed; their preference, whatever it may be, and to the extent at least that it is indicated by the electoral vote, reaches us through the regular channel ordained by the constitution,—and is not, as must generally be the case with instructions on matters of legislation, the mere ebullition of popular meetings, roused into action by some temporary excitement. So that the will of the people, on this subject, comes to us, consecrated and enforced by the constitution itself. What, then, is the argument of the advocates of the proposed rule? That we are bound by instructions on matters of legislation, which the constitution supposes the people to be incapable of performing; and yet, in the performance of an act, which the constitution supposes, and justly supposes, the people to be more capable, because more worthy of performing, than ourselves, and which devolves upon us by an unavoidable contingency only, we are under no obligation to regard their opinion, nor subject to any responsibility for the manner in which we treat it!

Never was there a more paradoxical argument advanced, in a grave deliberation. What

does it amount to? Neither more nor less, than that the people know how to make laws better than we do; and that we are more worthy of the trust of making a President, than the people. This is palpably inverting the principles of the constitution. Upon what principle is it, that the people of the United States have retained in their own hands the power of electing a President, and have not retained a single vestige of the power of legislation, that acts of legislation cannot, in the nature of things, be performed by a multitude of people, dispersed over a vast territory, like that of the United States. If every citizen were a statesman, still would they be incapable of legislation; because they could not have those preliminary consultations, and that mutual interchange of ideas, which must necessarily precede every intelligent act of general legislation. They have, therefore, delegated that power entirely and exclusively to Congress. But have they the same obstacles to surmount, in electing a President? Are any preliminary consultations and interchanges of ideas, necessary to enable them to perform that act? On the contrary, every citizen gives his suffrage with more coolness, deliberation, and wisdom, in the ballot-box of his own vicinity, than he would if all the people of the United States were collected together. The people, therefore, have retained the power of electing the President, under the idea that they are a safer depository of that power, than any which human wisdom could possibly devise. This, sir, is the principle of the constitution; and it is the principle of eternal truth. All experience has sanctified and confirmed it. The history of every people capable of freedom, demonstrates, that, in selecting officers, even of the highest grade, they are fully competent to form a correct judgment of the peculiar qualifications demanded by any emergency, or required for any office. Look into the history of those republics that have gone before us. Where do you find, illustrating either the civil or military departments of any nation, statesmen or generals of more elevated characters and splendid endowments, than those that were elected, even by the wild democracy of Athens, or the conflicting compound of aristocracy and democracy, that swayed the destinies of Rome? All the distinguished patriots and statesmen, who reflected so much glory upon those ages, and left such noble examples to reanimate the alumbering genius of succeeding generations, were elevated to office by the choice of the people. Sir, if there be any function which, in the organic operations of civil society, the people are peculiarly qualified to perform, it is, by a sort of instinctive perception, which seems almost to rise above reason, the selection of men best calculated to represent them in important political stations. If public men are distinguished

by the ascendancy of their talents, the elevation of their characters, or by disinterested devotion to their country, my life upon it, these exalted qualities will neither escape the attention of the people, nor fail to make the appropriate, corresponding impression. *They* have no selfish purposes, no ambitious aspirations, no secret and sinister designs, to prevent or pervert the free and impartial exercise of their judgments. It is, in the nature of things, impossible that they should have. All their feelings are essentially patriotic. They rejoice only in the glory and prosperity of the republic, and are proud of the opportunity of elevating to power, those who are best qualified to promote these great ends. Sir, the glory and prosperity of the country is their glory and prosperity; and what other possible object can they have, in electing a President? After all, the quality most essential in the election of that great officer, wielding, as he does, the vast patronage of a great and growing country, is *an honest purpose*. This you will always find with the people; but man is *not* man, if you always find it anywhere else.

But, sir, there is another ground which distinguishes the election of a President by this House, from an act of legislation; and shows that the obligation which the popular will imposes upon the representative, should be much stronger in the former case than in the latter. In the ordinary case of legislation, we are, in most instances, called upon to act upon emergencies, of sudden and unexpected occurrence. The current of events is in a perpetual fluctuation; circumstances are continually presenting themselves in new combinations, which no one could anticipate, and which must, nevertheless, constitute the basis of legislation. For example, before we came here, none of us knew that we should be called upon to give a vote respecting the Cumberland Road, the Delaware and Chesapeake Canal, or the Suppression of Piracy. Topics like these are continually springing up, which we must decide, before they have even been the subject of deliberation among the people. But what is the nature of that question, which we shall be called upon to decide on Wednesday next? And what are the circumstances under which we shall decide it? It is a question which has been distinctly presented to the people, for consideration, *by the constitution*; and has been, for the last four years, fully and freely discussed before the people, with an immediate view to the exercise of the highest power, and most sacred privilege, they possess—the actual choice of the man who is to preside over their destinies. It is a question, therefore, which, from the very mode of its recurrence, must always be presented to us, after it has undergone the deliberate examination, and, to a certain extent, the decision of the people.

But there is another view of the constitution on this subject, which leads us still more clearly to the conclusion, that, in the selection of a



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President from the candidates presented to us by the people, we are bound to regard their will as the rule of our conduct. I will illustrate it, by putting a case, to which I request the particular attention of the gentleman from Delaware, that he may obviate the inference which I shall deduce from it, if he can. Suppose that one of the candidates should receive one hundred and thirty electoral votes; the majority requisite to a choice being one hundred and thirty-one—is that candidate chosen President? You say, assuredly he is not. Why is he not chosen? Because he has not conclusive evidence that a majority of the people of the United States prefer him to any other candidate. Even the largest plurality, short of a majority, does not complete the election. For what purpose, then, is it sent here? That we may elect a man who unites only a small minority of the people of the United States in his favor? This would be absurd. The *reason* why the election devolves upon us, demonstrates the *object* for which it is sent here. It devolves upon us, simply because the constitution will not place the sceptre of power in the hands of any man who is *not* preferred to any other, by a majority of the people; and, therefore, I infer, as a necessary consequence, that the three highest candidates are sent to us, in order that we may select the one who is preferred by a majority of the people. The doctrine of the gentleman from Delaware, therefore, is in direct violation of the very principle of the constitution, which imposes upon us the duty of electing a President.

There is yet another reason which operates with great force on my mind, in favor of considering the members of this House the mere organs of the popular will, on this question. It is this. If, in the discharge of our legislative duty, we pass a law which is unwise, and in its operation injurious to the country—the remedy is easy and obvious. The people raise their voices against it; they discard the offending representatives, and the obnoxious law is repealed. But if it should happen on this, or any future occasion, that this House should elect a President from selfish and corrupt motives, where is the remedy? There can be none. The deed is done. It is irreclaimable. Even the perpetrators may repent, in sackcloth and ashes, but there is no power that can do away the iniquity. It is evident, therefore, that if we do not recognize the right of the people to control our votes by instructions, we act wholly without responsibility. It is in vain that they have the right to dismiss the unfaithful representatives from their service. Though the example might operate as a terror to future transgressors, yet the work of corruption would still remain, and the administration, though detested and execrated by an indignant people, would maintain its odious and distracted rule, during the whole constitutional period. The very circumstance that the act is in its nature irrevocable, makes the denial of the right of

instruction, equivalent to an absolute denial of all responsibility whatever, on the part of the representative.

There is another view of the subject, involving considerations of great delicacy, to which I feel bound, by a sense of duty, to call the attention of the committee. What, sir, is the peculiar nature of the power we are about to exercise, as it respects our own honor and reputation? When I am called upon to give my opinion upon any measure of general policy, or to co-operate in the passage of a law, in which my constituents and myself are equally interested; if I discharge that duty according to my own best ability and judgment, though my conduct should expose me to disapprobation and censure, yet I can elevate my head, not only with a consciousness of my own purity, but with the still prouder consciousness that no man *suspects* me of dishonor. But what must be the feelings of every high-minded and honorable man, when called upon to perform that duty which will soon (and, I trust in God, for the last time) devolve upon this House? Though his heart might be as pure as the principles of our holy religion, and his conduct as disinterested as patriotism itself, yet, should he act in opposition to the will of his constituents, to what ungenerous imputations must he not unavoidably subject himself? Acting, as he does, in the midst of temptations, which even the most virtuous find it more easy to avoid than to resist, how many will be ready to point at him the finger of scorn, exclaiming, as he passes, "There goes the man who abandoned his constituents, and sold his country!" In vain does his conscience acquit him; in vain does he seek for consolation in the consciousness of his own integrity. To a mind of nice sensibility, there is something both mortifying and degrading in the idea of being the object, even of unmerited suspicion. When called upon to act, under such embarrassing circumstances, should we not, therefore, anxiously adopt, for the regulation of our conduct, a sound and steady principle, upon which our honor may securely repose, free from the breath of suspicion? If we take the will of our constituents as our guide, we shall come to the discharge of the important trust in question, with our powers of attorney in our pockets, and our principles inscribed on our foreheads. No speculations will be then indulged, as to the motives of our preference; and we shall act under the cheering and consolatory conviction, that even malignity cannot insinuate that any secret hope, or latent expectation of reward, has induced us to disregard the will, and sacrifice the interests, of our constituents. Sir, I do solemnly declare, in the presence of my God, that if the election of a President were a duty of frequent recurrence, and I were called upon to discharge it upon principles, or under circumstances, that would expose me to such imputations, I would resign my seat, and abandon public life forever, rather



than put it in the power of malice to assail my reputation, by charges so plausible.

I will call the attention of the gentleman from Delaware to a view of this question, which I request him to consider, as (what I know him to be) a judicious, a practical statesman. We have thus far looked at the theory and philosophy of the constitution; let us now advert, for a moment, to the practical operation of the Government.

The gentleman has told us, that we should select the man whom our own judgment—"our independent judgment," shall indicate, as *best qualified* to fill the Presidential office, without respect to the opinions or wishes of the people. Sir, the first qualification of the Chief Magistrate of a Republic, *is the confidence of the people*; and *no man*, who has not that confidence, can be either entitled or qualified to exercise the powers that belong to that exalted station. Suppose we were perfectly certain that the man whom our independent judgment would select, as best qualified, would be opposed by the deliberate will of four-fifths of the people. Would we have a right to elect him? "Oh, yes," says the gentleman, "the constitution gives us the right." I know we have the physical, and, if you will, the constitutional power; but that is not the question. Have we the moral right? Is it consistent with our duty, as representatives of the people? Gentlemen may talk as much as they please about our prerogative, as "independent judges," and utter specious and imposing dissertations upon the rights of conscience; but, if we elect a President in direct contradiction to the known will of the people, what will be the inevitable consequence? You clothe him with the emblems of power, without the substance; you impose upon him the highest of all responsibilities, without the power of fulfilling the obligations growing out of that responsibility. In a word, sir, you put the sceptre into his hand, and, in the very act of placing it there, you paralyze the arm that is to wield it.

Let us look a little more minutely into the nature and operation of public opinion, as connected with this subject.

If the people of the United States had never been called upon to examine this question, and express their will in relation to it; if it were a principle of the constitution that the Chief Magistrate of the Republic should be elevated by lot; and if chance were to cast the office upon a man who was not their choice, and who had not their confidence; I believe they would patiently acquiesce, although their will should be defeated. But, when the constitution has made it their right and their duty to examine the question, and express their will upon it; and when they see that will defeated by human agency, the agency, too, of their own representatives; is it in the nature of things that they should not feel deeply indignant at the authors of so glaring an outrage upon their most sacred rights? Is it to be expected that they

would calmly and quietly submit, when their constitutional will has been contemned by their representatives? Are they, indeed, the mere stocks and stones, which such insensibility would imply? Sir, I sincerely hope, as I confidently believe, that they are not. It would be a fearful omen if they were. It would go far to prove, what the arguments of the gentleman from Delaware seem to imply, that they are incapable of exercising this high attribute of self-government. But the supposition is a libel upon the people. If you were to elect a President, upon the principles and under the circumstances I have supposed; you would elevate him only to be a more conspicuous object of public reprobation; a miserable effigy of power; a common target, at which a high-minded people would level their just indignation. Sir, a lofty and generous ambition would disdain to accept power under such circumstances.

I presume I shall not expose myself to the imputation of flattering the people of the United States, (and God knows I have never been a flatterer, either of the people or their rulers,) when I ascribe to them as much virtue and intelligence, as has ever fallen to the lot of any people on earth. Nor shall I be considered as advancing an extraordinary proposition, when I affirm, that our Government is constructed, and ought to be administered, with as much regard to the will of the people, as that of Great Britain—or, to put a clearer case, that of France in the days of the Emperor Napoleon. Yet, in neither of these Governments were the principles of the gentleman from Delaware ever carried into effect. They never were carried into practical operation by any civilized Government, holding jurisdiction over an intelligent population, nor, until the nature of man is changed, will they ever be. As respects Great Britain, where time and experience have adjusted the operation of the political system, certain principles, recognizing the controlling influence of popular opinion, have been so long settled by the practice of the Executive Government, that they are now considered fundamental. No administration ever thinks of retaining power, with a majority of the people against them. How often have we seen the King, in obedience to the voice of the nation, discard from his service ministers in whom he still reposed the most undiminished confidence, and select others, not in conformity with the dictates of his own "independent judgment," but in compliance with the will of the people. Their confidence, and not his, is the point upon which the existence of an administration depends. Sir, there never has been a minister in England, not excepting the late Lord Castlereagh, who would have nerve enough to take the seals of office upon the principles maintained by the gentleman from Delaware. If, then, in a country where the authority of the Executive Government, in addition to its mighty patronage, is invested with the sanctity which

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naturally results from its hereditary character, it is practically demonstrated by the experience of a century, that no administration can maintain itself against the will of the nation—how desperate would be the experiment of electing a President against the popular will, in this country, where the people are more generally intelligent, the Government more popular in its organization, and the Executive Department destitute of the adventitious influence which belongs to an hereditary monarchy! Even Bonaparte himself, when supported by two hundred thousand bayonets, and wielding the whole military power of France, was compelled at all times to acknowledge the supremacy of the national will. Such was his own declaration, after he had fallen from power, when viewing the retrospect of his eventful life, with the eye rather of a philosopher than a monarch. If this mighty sovereign was compelled to admit the omnipotence of public opinion, what a wretched spectacle of debility and distraction should we have, if it should be disregarded in the election of a Republican President! Sir, a President elected upon such principles, would be an object rather to be despised, than dreaded; for he would soon find, that he had very little power, either for good or for evil. I will now say a few words in answer to an imposing, but, in my opinion, deceptive argument, urged by the gentleman from Delaware. He asks—If we are bound to obey the will of our constituents, how can we ever make an election, since that obligation would constrain the friends of each candidate to adhere to him throughout the contest? Now, there may be many difficulties connected with a doctrine or a duty, which neither destroys the truth of the one, nor absolves from the obligation of the other. If the mere existence of such difficulties would absolve us from any duty, there would be an end to the obligation of almost every duty. I see a very easy and obvious mode of surmounting the difficulty suggested by the gentleman; but, before I state it, I will take the liberty of asking him how he can get over the very same difficulty, upon his own principles? The principle of preference, whatever it is, that induces a member here to vote for a particular candidate, imposes upon him a moral obligation to vote for that candidate. I say we should vote in conformity with the will of our constituents. The gentleman says we should vote in conformity with the dictates of conscience. There is my principle, and here is his. They are of equal obligation. Is it not evident, therefore, that both would equally produce the difficulty under consideration? If we adhere, without departure, to the candidate selected upon either principle, there can be no election. But, sir, the difficulty is imaginary. The plain and practical rule is, to endeavor, if possible, to carry into effect the will of our constituents. We must make this effort honestly, without any skulking behind pretence, or forms. If it be found that their favorite

cannot prevail; that the candidate who received their electoral vote unites but a small minority of the people of the United States in his favor, and that the two others are more prominent; we must then choose between them, still conforming to the will of our constituents, in making that choice, if their will be known to us. If we cannot succeed in electing their first choice, we should endeavor to elect the person next in their confidence. By this process, the final control will be found, where it ought to be, in the general voice of the people of the United States.

I find myself called upon, to do what? Not to elect a President, but to complete an election which the people have left in an inchoate state, merely because they cannot meet together to complete it themselves. The framers of the constitution supposed that the popular branch of Congress would be the best means of concentrating the national will, and thereby consummating the work commenced by the people. The *principles* in which it originated, are not changed by the accidental circumstances which have cast upon us the duty of adding the finishing stroke to it. All agree that it is a misfortune that a majority of the people have not united in favor of one man; and that it was the very end of the constitution, the "consummation most devoutly to be wished," that such majority should have been obtained in the first instance. Why, then, is it not equally desirable now? What is it that has suddenly produced this magical change in the principles which regulate this great national operation, of choosing a President? Sir, these principles are eternal, and circumstances do not affect them. If, as it must be admitted, it was the primary object of the constitution to elevate to the Executive chair, the man who should be the choice of a majority of the people, that does not cease to be the object of the constitution when the election devolves upon this House. The election of a President must be regarded as a continued operation, carried on upon the same principles throughout. It would be a miserable and incongruous piece of patchwork, to commence with one set of principles, and end with another.

But, says the gentleman from Delaware, the power we exercise in electing a President is not conferred upon us by the people, but by the constitution. Were I to take this proposition simply in the terms in which he has expressed it, I should regard it as either absurd, or unintelligible. But I know the gentleman's meaning, and will not affect to misunderstand him. His proposition is, that the election does not devolve upon this House by any act of the people, expressive of their wish that it should come here, but by a mere contingency, for which, as it must unavoidably occur sometimes, the constitution has made provision. But how does this strengthen the gentleman's argument? Are we to be told that, because it is the "necessity and not the will" of the people, that

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"consents" to our having any thing to do with this question; we are, therefore, absolved from all responsibility? The very reverse should be the inference.

Mr. MANGUM, of North Carolina, then rose, and said, that he felt great repugnance to obtrude his remarks upon the notice of the House at any time—a repugnance which, upon this occasion, was certainly not diminished by the state of indisposition in which he found himself. That he felt it his duty to make a few remarks in reply to those he had just heard—not so much with the view of affording either interest or instruction to the House, as with the view of publicly avowing those principles which he deemed sound, and by which he had determined that his conduct on the approaching occasion should be regulated.

The question, said Mr. M., immediately under consideration, is intrinsically of but slight and trivial import, but it derives much consequence from other and more important questions that have been drawn into discussion. What, asked Mr. M., is the nature of the question before the House? It is one exclusively of police. But, from the manner in which it had been treated, he should have inferred, but for the gentleman's disclaimer, that his object was not so much to discuss *this* question, as to issue a sort of manifesto to the people of the United States, to justify those who yield to a strong current, and to damn those who resist it. It is a question not of open galleries or closed galleries. Gentlemen had, therefore, been engaged in combating shadows; and much of what had been said, had been addressed to a motion which no one had made.

The question, as he understood it, was simply this:—Whether the galleries should be thrown open, subject to be closed at the motion of the Speaker, or, whether they should be thrown open, subject to be closed at the request of the delegation from any one State. For his own part, he should have thought that the latter arrangement would have been conceded as a matter of courtesy, to those gentlemen who stand singly and unsustained by colleagues, as representatives from the weaker States. For himself, he had not the remotest idea that those galleries, let them be occupied by whom they might, were about to overawe the House, or exert any improper influence upon it whatever. His reliance was placed upon the deep moral feeling that pervades this nation. On this he relied to sustain gentlemen in the discharge of their duty; and on this he relied more than on all the bayonets and cannon that military despotism ever wielded.

This is a mere question of order. The admission of strangers was an act of courtesy, granted, as such acts are always understood to be, upon an implied obligation of good behavior. It was not to be presumed beforehand, that those who were admitted, would violate the laws of decorum; but if they did, there could be no doubt that the Speaker was com-

petent to exclude them: and as little doubt that he would do it at the suggestion of the delegation from any one State, that a free exercise of their rights required their exclusion.

He would again repeat, that he felt no fears from any attempt to overawe the House; and still less had he fears of the intriguers who had been spoken of, whether posted in the galleries, or operating in this hall. His position was peculiar; it was that of an armed neutrality, he had but little to hope, and nothing to fear.

He knew that he stood upon a narrow isthmus, lashed upon either side by the most angry surges, from which neither numbers nor denunciations should be able to drive him. Calling to his aid the little lights of his understanding, and with a heart bent upon the best interests of his country, he should firmly and fearlessly endeavor to perform his duty.

He should not, however, have troubled the House at this time with a single remark, but for the principles he had heard advanced; and against which he felt it his duty to enter his solemn protest. He had always listened to the gentleman from South Carolina with great pleasure, and he must confess that he had heard him on this occasion with the more pleasure, because he thought he had perceived that his talent, his ingenuity, and his fertility of resource, had proved insufficient to sustain him under the weight of the cause he advocated. Whom, asked Mr. M., are we bound to obey, in giving our votes on the approaching occasion? We, I mean, who are in the minority? If I understand the gentleman, we are bound to obey the will of those whose candidate shall have the highest number of votes. I would be glad to know whether we are bound to do this by a moral obligation, or only by reason of the *philosophy* of the constitution, to which the gentleman alluded. If by a moral obligation, that obligation addresses itself to every honest mind with the force of a perfect obligation; it must be obeyed, and why then has the constitution been so silly as to allow us a choice between three candidates, when we are *morally*, and of course *perfectly* bound to elect the candidate who has the largest number of votes in the electoral colleges?

[Here Mr. M. yielded the floor to Mr. McDURRIS, who wished to explain. He had not said that gentlemen were bound to elect the candidate who had the highest number of votes: on the contrary, he had said distinctly, that a plurality of votes did not make an election.]

Mr. M. resumed. He was then to understand the gentleman, that we are not constitutionally, but only morally bound; or, in other words, that we have no right to disregard the will of the people, as expressed in a plurality of votes by the electoral colleges. But, if so, was not the argument the same?—the conclusion the same? Was not that obligation as binding, as an obligation emanating immediately from the constitution? Must not every honest man regard it in that light? And must not every man

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who was not base enough to barter away his birthright for a mess of pottage—to sell himself for loaves and fishes—feel its binding power? If the obligation was a moral one, it was a perfect one, and as such, commanded perfect obedience. He must, therefore, most emphatically repeat, that it was extreme folly, if not worse, in the framers of the constitution, to give to this House the power of selection between three candidates, when, at the same time, the hands of members are tied up from the exercise of that power by the strongest obligations. The constitution, then, holds out to us bread, and gives us a stone.

But this never was the design of the framers of the constitution. And the very fact that they have given us the power to choose, is enough to prove that the principle, as stated, does not furnish the rule by which we are to be governed.

If, then, we are not bound by the gentleman's *moral obligation*, to elect that candidate who happens to have a plurality of votes in the electoral colleges, what is the rule by which we are to be governed? Is it by the vote of our respective States? That cannot be the rule: for the constitution has not prescribed any uniform mode for the election of electors, but has left that power in the Legislatures of the States. And it may happen in those States in which they elect electors by districts, that there may be a tie; that the votes for two contending candidates may be equal. How will gentlemen extricate themselves from this dilemma—the dilemma of a tie? Will they resort to their *principle*? It will fail them—it is not principle—it is, in my humble judgment, absurdity. The gentleman from South Carolina has asked the gentleman from Delaware, with a sort of triumph, to answer the case which he put, to wit: that if 130 votes should be given for one candidate, falling one vote short of the number required for an election, whether that gentleman would *dare* to resist such a majority? I would answer, that great respect is due to the opinions of the people. That it would be great impolicy, in ordinary cases, to resist so full an expression of the public will. But reasons might exist, which would render it the imperious duty of the representative, as an honest man, to resist it. There is no *principle* concerned, as, I trust, I have shown. It is mere matter of *expediency*. But let me suppose a case, predicated upon the alleged principle, that we are bound to give our votes in accordance with the votes of our respective States, and ask the gentleman to answer it. There are twenty-four States and three candidates for the Presidency. Suppose eight States should vote for each candidate; if we are bound to vote as our respective States do, no election can be made. And what will be the result? It is obvious. By adhering to the *principle*, of which the gentleman speaks, you postpone three candidates, upon whom the people of the United States had fixed their eyes, as fit persons for the Chief Magistracy, and each

of whom had received the votes of one-third of the people of the United States for that office. You set aside all these, and let the Vice President into that office: a man who had not received a single vote in the United States for the Presidency. What will the people's men say to this doctrine? and yet it is *principle*, sacred principle, according to the views of some gentlemen. But, says the gentleman, we are first to try to elect the people's man, and if we cannot effect that object, then, and then only, take up some other candidate. We must yield to the necessity of the case. Mark me, it is moral principle, says the gentleman, by which we are bound. A principle is surely a very bad one, which will not wear longer than one day, and which must be abandoned as soon as it is put into practice. But we must yield to the necessity of the case! I had thought that that which yields to any necessity whatever was not moral principle, for moral obligation admits of no compromise. It is said that, if on trial we cannot succeed in electing a President, to prevent the Vice President's coming into that office, we must give way. But here are eight States in favor of each candidate—who is to give way first? If I give way first, may not my constituents reproach me with an abandonment of principle? If the gentleman gives way first, does he not abandon principle? Sir, such a principle as must be abandoned on one day's trial, is not a principle which I will ever recognize.

If, then, sir, we are under no moral obligation to vote for the candidate who has the highest number of votes, nor to obey the votes of our respective States; what, I again ask, is to be the rule which must govern us? Sir, it appears to me that the whole fallacy, which pervades the arguments of the gentleman whose views I am opposing, consists in this—they are comparing the votes of the people, taken *per capita*, with the votes of twenty-four distinct and independent sovereigns. They are comparing things which have no points of resemblance, nor have they any assignable relation to each other. The States, as sovereigns, are all equal. The people, who make up those sovereignties, numerically considered, are totally unequal, and, in that respect, bear towards each other various and diversified proportions. Are we then to be bound by the votes of our respective districts? (This is the doctrine of the *people's* men, and all are *people's* men nowadays, from the much reprobated caucus men, down to the humblest political professors.) Here, I trust, I may be permitted to say, that I shall, for once in my life, at least, in the honest discharge of my duties, fall in with the doctrines of the *people's* men—I expect to represent the plurality of my district.

But are we bound by the votes of our districts? I mean, in point of principle? Did the framers of the constitution design that we should be so bound? If they did, wherefore does not the constitution prescribe a uniform mode of electing representatives by districts? And yet the

power of prescribing the mode, is left with the legislatures of the respective States. Some States elect their representatives by general ticket, as does Georgia, for example. How will gentlemen ascertain the votes of their districts, under the general ticket system? How will gentlemen extricate themselves from this dilemma? Will they do it by resorting to the statement, that the State, in that case, is each member's district? If so, then each member is bound to represent the vote of his State. This brings the question back to the ground on which I have already considered it; and the doctrine is subject to all the objections to which I have already adverted. It is true, that the gentleman from South Carolina cannot be mistaken as to the vote of the people: for in that State they elect members by districts. Should he recognize the principle of perfect obedience to the voice of his district, then should also every other member. If this is principle, what would be the consequence of adherence to it, in the most of cases—indeed, in the actual posture of affairs at present? It is plain—no President could be made, and the Vice President would come in. If it is principle, we are bound to adhere, but if we may give way, and are not bound to adhere, then it should no longer be dignified with the name of *principle*, but it is a mere question of *expediency*. Again, if we are not bound by the votes of our districts, (as is clearly the case in some of the States, for the simple reason, that they have no districts,) but are bound by the votes of our respective States, then this dilemma might arise: A member might be obliged to vote for a candidate, who was opposed by every man in his district. Here he gives up the wishes of all his constituents, the only people upon earth to whom he is politically responsible, and for what? To fall in with the vote of the State—and by adhering to that vote, no President is elected and the Vice President comes in, after all these fearless and *patriotic* sacrifices.

Again: If our States were all of equal size, that is, equal in point of population, and the people fail to make an election in the electoral colleges, it is clear that no election could ever be made by the House of Representatives, should the members recognize as correct, and *adhere* to the principle, that they are bound to vote in accordance with the votes of their respective States. In the present unequal size of the States, under any ordinary circumstances of combination, the operation of that principle would defeat an election nine times out of ten; and in no solitary case can an election be made in the House of Representatives by adhering to the principle, except by enforcing the odious doctrine, that the minority shall prevail over the majority—that is, by making thirteen or more of the smaller States, that had voted for one candidate in the electoral colleges, *without effect*, come into the House and do the same, with *complete effect*. What they were unable to do, by reason of inequality of population,

they are made to effect by the equality of their sovereignty. Sir, if these are *people's principles*, I, for one, beg to be delivered from them.

It is said that, in matters of *legislation*, it is a vexed question, whether the representative is not bound to obey the will of his constituents, and that many great and wise men have held the affirmative. Sir, I would not give a button for the doctrine, either the one way or the other, so far as regards its *practical* utility. As to the mere theory, I concede it to gentlemen—they may delight themselves with whatever theories they please, whether ingeniously or inartificially constructed. But, though the question, as to legislation, may be vexed, gentlemen tell us, that, in the business of electing a President by the House of Representatives, there can be no doubt—the case is a plain one. Sir, I argue directly the reverse. In the business of legislation, the people, in primary assemblies, cannot act—it is constitutionally, it is physically impossible. There is, therefore, a propriety, in a representative Government like ours, that the legislative body should respond to the voice of the people; that, as a reflector, it should give back the true image of the people's wishes. But, in the election of the chief magistrate, the people *can* act in primary assemblies. Those assemblies present the proper and the best mode in which the election can be made. But the people, having attempted an election in this mode, and having failed of success, the constitution brings the election to this House: this House is the *umpire*, the judge on whom devolves the settlement of that momentous question, which the people have been unable to settle themselves, for want of greater unanimity.

Sir, I hope I have now succeeded in showing the fallacy of the gentleman's—pardon me—the *people's doctrines*, of instruction. What, then, is our duty, in the present crisis, and on the approaching occasion? Is it to fall into the ranks of the candidate who may happen to be the strongest? (A very comfortable doctrine, indeed, particularly to those who happen to be in the minority; our understandings and conscience approving, we should like to be wafted with you gentlemen, on the strong currents.) Is it to obey the voice of our States? or, is it to obey the voice of our districts? It is, in my judgment, neither more nor less than this—To do what is right, according to the best dictates of our own understandings, and leave the consequences to God, and to our country.

It has been asked, how can we hold up our heads when we return home, if we have gone against the will of our constituents? Sir, we can hold our heads as erect as an angel. The man who has honestly done, what he understood, after deep and anxious reflection, to be his duty, may meet the eyes of his constituents, aye, the eyes of the world, and neither blench nor quail, though none should smile upon him. It has, also, been said, (and the remark, though it can have none here, may be calculated to have an effect abroad,) that,

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whenever a man has done deeds of renown, the people delight to honor him, and will, with great certainty, elevate him to the highest offices. Sir, this is a mere truism; everybody here knows that this is true. It is what the people will always do; it is what they have done in a thousand instances; but, sir, it is *exactly* what, in the present case, they have *not* done. Else, why does the election come to this House? Sir, a majority of the people have distinctly told you, that not even the most favored candidate is the man of their wishes. Neither is elected, though all may have been honored. It is we who must elect.

We have also been told, that upon grounds of expediency, the sceptre ought not to be placed in the hands of any man who has not a majority of the votes of his countrymen; and that, if we do place it in the hands of such a one, we only place it there to lop off his arm. Sir, this but ill agrees with what is a fundamental principle in the system of the *people's men*. What, sir! are the intelligent and enlightened people of these States, who are so much flattered in one breath, to be represented in the next as ferocious as tigers? Are they to rise in their wrath, and hurl the full weight of their indignant vengeance at an individual who has done no harm? Who has done no one act to excite their displeasure? Suppose three candidates should come before us with an unequal number of votes, I admit we should very properly feel inclined to elect him "*ceteris paribus*," who had the largest number, (for I would not willingly deprive gentlemen of the smallest comfort.) But, suppose the candidate who had the smallest number should, in the result, be chosen President, is it maintained that the people of the United States would rise in vengeance against that man? Surely, sir, whatever phials of wrath might be exhausted on the heads of their guilty representatives, the people would pour out none upon the innocent head of a man who had done no one offensive deed, and whose only crime had been to be constitutionally presented for choice, and constitutionally chosen. We have heard, further, and much to my astonishment, that the doctrine of the gentleman from Delaware would not flourish in old England—nay, that it is too strong even for the military despotism of Napoleon. I scorn to flatter any man, and am sure that, on this occasion, I shall be exempt from the imputation of such design, when I say I was an attentive listener to the gentleman from Delaware, and did think, and still think, that sounder doctrines, or doctrines delivered with more pellucid clearness, never fell from the lips of any man, than from those of that distinguished member; and I did consider the demonstration by which they were maintained, precluded reply; and I am happy to find my own opinion bolstered and corroborated by an opinion that comes to me with so much weight and authority.

I have not heard why his doctrines would

not flourish in old England; the gentleman from South Carolina did not condescend to favor us with any thing more on that point than mere assertion. As to what was said in regard to the iron reign of Napoleon, and the declarations that he made, it is indeed true, that that despotic ruler *professed* to be governed by the will of the people, (Bonaparte, it seems, too, was also a "*people's man*.") But, sir, while he *professed* this, he was supported by 250,000 bayonets; and, in such circumstances, what was the "*people's will*?" It was the will of their tyrant.

Here Mr. M., not having concluded his remarks, gave way for a motion for the committee to rise.

MONDAY, February 7.

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On motion of Mr. WHEAT, the House then went into Committee of the Whole on the state of the Union, Mr. TAYLOR, of New York, in the chair, and resumed the consideration of the rules (reported by a committee) to be observed by the House in conducting the election of the President.

And, the question being on striking out the last clause of the third rule, which provides that the galleries may be cleared at the request of the delegation of any one State—

Mr. MANGUM said, that, when the committee rose the other day, as he presumed for his personal accommodation, he had well nigh concluded the remarks which it was his intention to submit on this subject. He felt deeply sensible of the polite attention of the committee, and the best return in his power to make for their kindness was to refrain from trespassing again too far on their patience.

This subject having already occupied a disproportionate space of the time of this House, he should not again take up the argument, but only submit a few general observations, which he had designed to offer on the former occasion. He knew full well the immense advantages which gentlemen have when they address themselves not to the understanding and the judgment, but make ardent appeals to the prejudices and passions of the people. The people's rights, and the sovereignty of the people!—the very finest and most popular themes for declamation! He felt the great difficulty of being heard, coolly and dispassionately, at the bar of reason, at the moment when the passions are stimulated into tumult, and worked up to a pitch of frenzy.

In this country, as we have seen from the foundation of the Government, whenever a new party was about to organize itself, or a new faction to spring into existence, its very first breath was breathed in a holy and fervent *love for the people*; its ardor and its devotion to the public weal, transcended only by the purity and disinterestedness of motives. I confess, sir, that I have lived long enough to distrust these ar-

dors. When I see the frosts of age dissolving under the warm glowings incident to youth, and the *patriot* of sixty entering the lists with the very flower and chivalry of the land, endeavoring to outstrip them in demonstrations of love and devotion to the people, I begin to look about me; for I fear mischief, or suspect treachery. I need not refer you only to our own history, but the history of other countries, and other ages, discloses the fact, that many of the bloodiest tyrants that ever disgraced humanity, began their career by fawning on the people, and sedulously and assiduously courting their favor.

It has been remarked by the gentleman from South Carolina, that all sovereign power resides in the people, and that every agent in authority must act in obedience to that will. The abstract proposition is evidently true; but the difficulty arises in the application of it to the case in hand. How is the will of the people to be ascertained? Is it to be derived from the county meetings, town meetings, publications, and rumors? Are we to resort to these loose, unsatisfactory, and contrary indications of the public will? Or, shall we resort to the constitutional indication—to that expression which has been made through legitimate organs? If the latter, it is apparent that a large majority have voted against either of the candidates. What, then, is our duty? I would again answer, to select according to the best dictates of our understandings. And yet, says the gentleman, this doctrine is too strong for Revolutionary France, it would have been repudiated under the reign of Napoleon. Mr. M. said it was a little curious to remark the striking coincidence between the early professions of Bonaparte, and those with which we are now daily saluted. He could hope that a coincidence should never be made to exist in this country, in any other respect. For what was the sequel in the case of Napoleon? Though his first love was the love of the people, and though he bowed with the profoundest respect to their will, yet he flattered, he coaxed, and he courted them, until he placed his foot upon their necks, and crushed their liberties with the most frightful military despotism that the world ever saw.

This is the natural order of things in a free Government, to begin a Jacobin and end a tyrant. We are told we must bow to the will of the people. I grant it. But I shall look for the indications of that will to a source which is unerring—to the constitutional indication of it. It is curious to remark how defective this *poor, tattered* constitution of ours is, according to gentlemen's notions of responsibility. They say we must vote with the people, (what people?) and yet the constitution guarantees to us the mode of voting by *ballot*, in the exercise of which, the vote of each delegation may be profoundly locked up in their own bosoms, and no human eye, not even the Argus eye of jealousy itself, can detect for whom that delegation

voted. There are four States in the Union, represented in this House, each, by one member. Those gentlemen, according to the rules established on a former occasion, and according to the rules reported on this, may hide their secret from all the world, if they choose. They have nothing to do but to make duplicate ballots, and drop one into each box, among twenty-three other votes, and how are their ballots to be known, to be identified? How does this comport with gentlemen's notions! How defective is the constitution according to their views! Instead of requiring members to vote in a manner to prevent the practice of fraud and deceit, that same constitution becomes "*particeps criminis*," by throwing the mantle over deeds of darkness and crime, by shielding them from exposure to the vengeance of disappointed ambition, or the scorn and hatred of a betrayed country.

There have been some politicians silly enough to imagine that the framers of the constitution looked afar off, and either dreamed or believed that occasions might arise when this provision would be found most salutary, that the safety of the republic might depend upon the ignorance of the tyrant where to direct his blows.

For myself, however, I hope, said Mr. M., that I may be permitted to say, that I hate mystery—I hate all concealments in the discharge of a public duty; and shall be one of the last to shrink from the severest scrutiny into the manner in which I may have discharged it. I would scorn the use of the mantle.

I advert to these considerations with a view of showing with how many difficulties this subject is beset, and how arduous would be the task of framing a theory, according to gentlemen's views, that would harmonize in its practical operations with constitutional provisions on the subject.

Sir, it seems to me that the true conception of the framers of the constitution is this: that the Representatives in this House would come immediately from the people—they are part of the people—presumed to be men of some character, connected with the community from which they emanate by a thousand ties; character, respect, family, children, a common interest, a common destiny. In a word, identified with that community in habits, feelings, sentiments, &c.; and, that when the result, so much to be deprecated, of the Presidential election being cast upon this House, shall happen, that all these ties and considerations form a sufficient guarantee that a wise, honest, and judicious selection will be made. This view, I think, said Mr. M., is conformable with the theory of the constitution.

What are the cotemporaneous expositions of the constitution on this subject? In the work entitled the *Federalist*—a work written by some of the ablest men who were in the convention, and which is resorted to by the ablest constitutional lawyers, as high and grave authority, I find the following opinion:



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"But as a majority of votes might not always happen to centre in one man, and as it might be unsafe to permit less than a majority to be conclusive, it is provided, that in such case, the House of Representatives shall select out of the candidates, who shall have the five (now changed to "three") highest number of votes, *the man who, in their opinions, may be best qualified.*"

And yet, it is said, that these doctrines would be odious in revolutionary France—they are too strong for the reign of Napoleon.

Such are some of the difficulties into which gentlemen are deluded and bewildered by an overweening attachment to their new-born theories—theories that have sprung into life from a brain highly excited by political contests—theories that are cherished with all the love that the mother bestows on her rickety bantling.

But, sir, if these theories may not be deduced from the letter of the constitution, may they not result from the *philosophy* of the constitution of which we have heard in this debate? Yes, sir, the *philosophy* of the constitution! That philosophy which, I fear, is to arm this great Government with that stupendous power which is to sink our State sovereignties into mere corporations—that power which has prostrated some of these barriers that the wise men of both the old parties recognized—that power which is incessantly, most fearfully, and alarmingly increasing. Yes, sir, the philosophy of the constitution! That philosophy which was reserved for the ingenuity and astuteness of modern times to discover; and of which that great and wise man, Patrick Henry—and a wise man he was—in all his awful vaticinations never dreamed of. Yes, sir, it is by courting these sovereign people sedulously and ardently, that all jacobins begin their career.

The people are sovereigns—but they are sovereigns in minority: they never have, nor will they ever come to the *crowns*, whatever some of their *flatterers* may do—and yet they have in full enjoyment one of the brightest and most undoubted attributes of sovereignty—the *flattery of their courtiers*.

I trust I may say, and truly too, that I have as profound respect for the will of the people, fairly expressed, as any man; and would preserve those interests committed to my charge as I would the apple of my eye. I would not look to the shouts of the multitude for the opinions of the people, but I look to their opinion as fairly and constitutionally expressed. To this I respond, to this I am obedient.

I regret that I have detained the committee so long on this subject. As regards the question immediately under discussion, I would not turn upon my heel for a decision of it, either one way or the other.

Mr. J. S. BARBOUR, of Virginia, said, that a sense of duty made it necessary for him to offer to the committee a few remarks; and in doing so, he should but express an entire concurrence in opinion with the gentleman from North

Carolina, (Mr. MANGUM,) that a new zeal had infused itself into our deliberations, resulting from the excitement at this moment pervading both this House and the country. He trusted that the fervor of this excitement would not warp the judgment of the committee, or divert it from the duty of calm inquiry, so imperatively enjoined on it. The first question presented to us I take to be this: Is it right to indulge the intense anxiety now felt by the public, in permitting an inspection of the proceedings of this House when constitutionally employed in selecting a Chief Magistrate? The history of that country whose precedents have supplied most of the forms of our deliberations, discloses to us the existence of controversies between the parliament and the people, on questions of giving publicity to the transactions of the former. It was deemed, and accordingly punished, as a breach of privilege, to publish the speeches or votes of members, and that, too, on the ground that those proceedings were matter of which the public had no right to be conversant. At the period of forming our constitution, these demands from the people, and their denial by the parliament of England, had made an appropriate impression in this country. To secure this right beyond the reach of cavil, and to supply the people with this safeguard for the responsibility of their representatives, claimed the attention of the wise framers of our political fabric. To secure this right, it is provided that the people have a just claim to know what Congress is doing, and that a journal of their proceedings shall, from time to time, be published, together with the Yeas and Nays, upon the demand of one-fifth of the members present. The usage of Congress supplies us with the best commentary upon this constitutional text. Its deliberations have been open to public inspection, with the exception of proceedings where high national considerations forbade immediate disclosure, and the precedent of 1801, which I think has been clearly demonstrated to merit but little attention. Is there any thing, then, in the duty now cast upon the House by the happening of the contingency provided for in the constitution, to distinguish it from ordinary acts of legislation, and to demand an unusual measure of safety or precaution. Can gentlemen imagine, for a moment, that our deliberations will be overawed? or, that any intimidation, whatever, will influence members in discharging this high function? It is a suspicion fraught with injustice to ourselves, as well as to the people. Throw over your acts the veil of mystery, and what is the result? All within is pure, and the members are engaged in the fearless fulfilment of the trust reposed in them. Will it be so, sir, without? I apprehend not. Distrust will fill the public mind, and jealousy will fire its passions; and when these overtake us, it will be in vain for us to rely upon the conscious rectitude of our actions, and the dignity of silent deliberation, to shield us from disrespect,



or the suspicion of ignoble conduct and unworthy motives. But I understand, from the argument of the gentleman from Delaware, (Mr. McLANE,) that, in making the selection, we act independently of the people, and, as a necessary deduction, that they have no right to witness it. I can never yield my assent to such a proposition. It has been successfully combated, I think, by the gentleman from South Carolina, (Mr. McDUFFIE.) With his opinions in relation to the rights of the people over our ordinary legislation, I must also express my dissent. He informs us that the constitution has vested the legislative powers of the United States in Congress—and asks, "What are the ingredients of legislation? Argument, inquiry, and deliberation." Sir, when the gentleman presented so forcible an argument in another branch of this question, upon the influence of popular will, could he not suppose that this, too, would necessarily enter into our acts of legislation? If tyrants, as he clearly showed, armed with power, are constrained to regard the will of the people, how much more forcibly should that argument apply to national legislation in a Government whose very basis is public sentiment? The will of the people is in this country, most especially, the mainspring of all political institution. This, alone, can with us give impulse to permanent legislation.

I cannot agree with the gentleman from North Carolina, that the wise men who gave form to the constitution, are against me. The journals of that day reveal a singular incident relating to this question, which may seem to array against me a most distinguished authority. When the constitution was in progress, amid the jealousies of its enemies, and the anxieties of its friends, numerous amendments were proposed by the several State conventions. Among these, Virginia sought to ingraft upon it a provision that would secure, at all times, the *right to instruct* Representatives. In the first Congress that subsequently assembled, an illustrious man, then representing that State, and who has since thrown a lustre over our character in the various acts of his public life, proposed this amendment, with an omission of so much as claimed *this right of instruction*. I am not prepared to receive this as evidence of his own enlightened view of the subject. The constitution, with all its amendments, is the offspring of a spirit of compromise. This alteration (by his proposition) of the expressed wishes of a convention in whose deliberations he was himself a clear and steady light, owes its birth, in all rational probability, to the same parent. A plain refutation may readily be given, (in my humble judgment,) of all doubts that cluster round this question.

In whose hands is the sovereignty of this Union reposit? The constitution supplies the answer: In those of the people. And what is the legislative power? It is but a seminal principle which fructifies in those

enactments, denominated *law*. Sir, the writers upon jurisprudence inform us, that Law is a rule of action emanating from a sovereign power, commanding what is right, and forbidding what is wrong. If, then, the people who make the constituent body, are admitted to be sovereign, and each representative expresses the sense of his constituents upon every vote he may give, in the passage of any law, do you not obtain a rule of action emanating from the sovereign power of the United States, and filling up the measure of the definition I have just recited?

The gentleman from South Carolina asserts for the people a controlling influence, in performing the duty required of this House, when the contingency presents itself, in which a *selection* is to be made here of the Chief Magistrate, because the constitution recognizes in the people the power and the capacity to make the election. There is a vice in this argument which I think is but apparent, or which may be easily resolved into our difference in the application of terms. The constitution contemplated an election by the people. But, that it was dangerous to give a power of such magnitude, to less than a majority of the whole who voted. And what is the remedy provided for a failure so to choose? The people are scattered over a vast extent of country; to assemble them together is impossible. The theory of the constitution then requires, as the most practicable mode, if a popular majority cannot be obtained, that a federative majority shall determine, combining with it the popular influence, by requiring a selection from the highest on the people's list. This is not the only security provided by the system, to give effect to public will. Had it designed to make your President a federative officer, the choice, in the second instance, might have been given to the States in their corporate capacities. Not so, sir. The choice is to be made by the House of Representatives, the direct and immediate dependents of the people, but that, in selecting, they shall vote by States. It was always intended that he should be the President of the people, not of the States, nor the creature of this House, and all the securities which the constitution could furnish to assure this end, seem, in my view, to point that way. It is true, they may be inadequate to the purpose, but that it was designed, cannot admit of doubt. This House, in its several State delegations, cannot be considered as the depository of the sovereignty of the States, but as the representatives of the people, not responsible to the States, but to the districts which they severally represent. Would it not then be a departure from all the checks and principles of the constitution, designed to secure the responsibility of public agents, to look upon members here as representing the States, in this contingency, to whom they owe no obligation, and as not representing the people to whom all accountability is secured by the forms of the constitu-

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tion. If this conclusion be a just derivative from the view taken, what is the pending obligation in making the choice? A sense of political duty will give the immediate reply. The President is designed to be the Chief Magistrate of the nation; the appointing body is chosen by the people, and the public will points to the path of safety when it points to the path of duty.

It is your duty, because you are chosen by those who have the inceptive right of making the election, and this course justifies and responds to the high trust confided. Safety results from it, because the magistrate so appointed reflects the wishes of the whole mass of the people, and will be the faithful guardian of their rights, their honor, and their independence. Elect upon these principles, and you constitute a President who unites public confidence and respect. He is clothed with a shield for your protection at home, and armed with the sword of retributive justice to punish foreign aggression. Choose him upon the other principle, he is the creature of the legislature, and not the servant of the people; dependent upon you, and responsible to you, what security is left for the preservation of our popular system? Can he combine the affections of the people, when his appointment is in pursuance, not of their will, but in manifest contravention of it? You may, indeed, have given him shape and form, and encircled him with the trappings of power and office, but he is not touched with the vital element which alone can give him being. Is he surrounded with the affections of a grateful and confiding people, which makes him the servant "of the people for the people's sake?" No, sir; he is pursued by their fears, and trammelled with their jealousy. The wishes of the nation driven contemptuously before him, while all the calamities of misrule follow in the rear.

Nor does the evil stop here. Whoever the individual may be, he can be but man. Filled with the frailties that belong to his condition, will he not seek to convert his pillow of thorns into a bed of roses, and meliorate his condition by seeking to ensure a reappointment? All the purposes of corruption will be essayed. The creature of this House, deriving being from it, amenable by impeachment to the Senate, who, with him, hold the appointing power of the Government, throughout the extended sphere of patronage, what, in some coming age, may not occur, when corruption, which grows with our years, shall have sapped the foundation on which all our purity rests! The purse of the nation in the hands of this House, may be made to act upon the Senate, and they, in return, to distribute among the representatives or their instruments, all the offices, lucrative or honorable. What is the responsibility of such a President? Not in the impeaching power of the Senate—for this House, in which it must originate, and there, where he is to be tried, are his co-partners in guilt. Sir, to use

the language of an eloquent gentleman on this floor, it was contemplated some years past, "to set up a pageant under color of law," in the chair of our Chief Magistrate. He would have been the President of the legislature, not of the people. And does any man believe, for a moment, that such a thing could have administered the Government? He would either have fallen a victim to the popular rage, which such an act would have lifted into tempest, or, had he weight enough to sustain himself, the liberties of his country would have been crushed, under his influence. And yet the gentleman from North Carolina considers such principles as these, jacobinical doctrines.

[Mr. MANGUM here observed, in explanation, that he had never said that these were the doctrines of jacobins. What he had said was this—that all jacobins began their course with very ardent professions of love to the people.]

How does the explanation of the gentleman affect the principle. These doctrines were professed by jacobins, and with them Bonaparte became the despot of France. Are such principles the less just among our sober reflecting people, because jacobins and Napoleon professed them? We are told that "hypocrisy is the homage which vice pays to virtue," and it is as true in politics as in morals. If others have lost their freedom by being duped with such a deceptive avowal of just opinions, shall we abandon them, when they have already proved the sheet anchor of our safety? It would be easy to retort, by saying, that, if jacobins have professed these principles, the doctrines of the gentleman are those upon which despotism has acted. If you view this body as one in which is a lodgment, a trust, of the powers of ten millions of people, it is an august Representative Assembly. If a body exercising such high prerogatives independent on the people, they are either so many members clothed with arbitrary power, or they dwindle into individuality. By such results, it may happen that the public passions are kindled; the forms of the constitution unable to restrain the turbulence of faction, jacobins spring up, and tyranny follows. It was not these doctrines that gave a Bonaparte to France, but an abandonment of all rational love of liberty. Her revolution burst out as a volcano—its crater was the birth-place of Napoleon—its lava the food of his ambition. He was mistakenly hailed as the champion of freedom, until his bloody banners floated in triumph over the fairest portions of continental Europe. When his followers awoke from the delusions into which he had lulled them, the iron power of despotism had fixed its dark dominion. Both he and his precursive jacobin horde are alike swept from the earth, and I ask, is the condition of humanity meliorated by the change?

Whenever, Mr. Chairman, a struggle shall arise between this country and this House for the choice of President, we may shudder for the continued existence of our political institu-

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tions. Either the representative body will sink in public estimation, or, if they triumph, it is a victory which subverts the basement of our free institutions.

The wise and jealous men who gave being to our form of Government, were deeply read in the history of past times, and they scanned, with prophetic eye, the coming events of futurity. The mournful lot of all the Governments instituted for the professed purpose of ensuring the liberty and happiness of man, filled them with apprehensions of danger to our new experiment. The opinion was received, that a republican form of Government was suited only to a small extent of country; and in the examples of past times, they found that intrigue, faction, and corruption, were the most deadly enemies of democracy. Against their assaults they sought to plant round the pillars of this new and experimental system, every possible guard. They contended that, when the popular will was to be gathered from a widely extended territory, faction and intrigue, always limited in their theatre of action, would not be able to expand their scope over this vast confederacy. Corruption, usually secret in its operations, could not show itself in the face of day, and spread its influence over the same expanse.

In securing the power of electing a Chief Magistrate to the great body of the people, scattered over so vast a territory, it was believed that such only would be chosen who possessed those commanding talents, and those sublime virtues, that are the subjects of universal admiration. By adopting the principle of the gentleman from Delaware, and vesting in this body an irresponsible power of selection, you banish this great safeguard of the constitution. You force the election into that small space upon which full scope is furnished for the operation of these baneful enemies of our free institutions. Upon the theory I have sought to advocate, in which members are the mere organs through which public sentiment is disclosed upon this floor, this great conservative principle is maintained in all its purity. The honorable gentleman from North Carolina says that, by this course, no election could possibly be made. I think differently. If each representative shall here speak the sense of his constituents, and that should not disclose on the ballot a majority of the whole, I take it that his duty would require of him by all exertions to give effect to their will. Should this be unattainable, and the last ray of expectation be extinguished in the gloom of despair, he should cast from him the expired hope, and yielding to the greater principle, which makes the safety of the nation the supreme law, he should make a President of one who, upon the best evidence before him, operating upon his honest judgment, appeared to combine the largest share of public affection and national support. The predilections of a part must, in the end, yield to the wishes of the whole. The

gentleman from North Carolina tells you that, according to the argument of the gentleman from South Carolina, you would fail to make a Chief Magistrate; and yet, in the course he speaks of pursuing himself, he would be conducted to the same result. He tells you that, for himself, he stands on an isthmus where the waves may lash in vain; unawed by fear, and unflattered by hope, he will not depart from his ground. What is to be the consequence, but the same catastrophe which he humbly thought was ascribed to the principles of the gentleman from South Carolina.

We are further asked, how are we to ascertain the will of the people? The forms of the constitution, framed in the wisdom of departed patriots, must be taken as the surest indications. If these are wrong, then is the constitution; resting on a vicious principle. It is somewhat difficult, in this country, amid both the freedom and the licentiousness of the press, to mistake the signs of the times. He would not seek to propagate theoretical principles, to which he would not in practice conform. Those who sent him here knew that he would have preferred two other candidates to the one who is their choice. He had no time to hesitate, with his limited intelligence. He could not presume to put his judgment in resistance to the mass of intelligence in the forty thousand electing him. It had been in vain for him to tell them of his predilections and high estimate of others. They presented him their candidate, of whom they said, his genius was his fortune, and his virtues his arts, his past service a pledge for the future, and by their sense required him to give that candidate his support. Their will was to him a law. Not a cold and dubious support should follow it, but one that would falter with the last hope.

Mr. McLANE, of Delaware, rose, and said, that he had been the unintentional cause of a debate, which he regretted now to be obliged further to prolong. If he could have foreseen the range the debate would have taken, when he briefly stated the grounds which would influence his course, he would have contented himself with a silent vote; but, unprofitable as the discussion was likely to be, he felt bound to make some reply to the observations of the gentleman from South Carolina, (Mr. McDUFFRIE.) That gentleman had seized upon one or two general positions, which he, (Mr. McLANE) had originally advanced, to deliver, with his usual talent and adroitness, a popular harangue upon the Presidential question, which, though certainly eloquent, was any thing but an answer to the argument which Mr. McLANE had submitted. Mr. McLANE said he felt under no obligation to follow the gentleman through all the topics to which he had adverted, and he could but remark, that the observations of the gentleman would have been much more pertinent, if he had been making a new constitution, than in interpreting the present. Mr. McLANE said it was no part of his business to inquire, whether

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better and more expedient provisions might have been made, or whether the will of the people could be more readily attained. It was enough for him to consider his own rights and duties under the constitution as it exists at present.

The points between the gentleman from South Carolina and myself, said Mr. McL., are few, and confined to a small compass. I contend that the immediate constituents of a member of the House of Representatives have no right to instruct him in his vote for a President, and that, though the opinion of the people of this Union, when fairly ascertained, would be entitled to great weight, it would not be absolutely imperative, but that the representative should, in all cases, exercise a sound and honest judgment, acknowledging only his ulterior responsibility. This is denied by the gentleman from South Carolina, who asserts the right of instruction, in this instance, to the fullest extent. To these points, Mr. McL. said he should confine his argument, leaving the mass of the gentleman's remarks to produce an effect wheresoever they might.

I distinguish our duty, said Mr. McL., in the election of a President from that in cases of ordinary legislation, though not admitting the right of instruction in either, because, in the former, our duties are not legislative but rather judicial, or a part of the electoral franchise, which, in its very character, implies freedom of thought and action.

The gentleman also distinguishes these duties, but reaches the opposite conclusion. He denies the right of instruction in matters of ordinary legislation, yet contends for it in our electoral duties! His theory is, to my mind, fallacious and unsatisfactory. He says the people have no right to make, are incapable of making laws, and therefore delegate that power to us, and cannot control us; but the people have a right to elect a President, and therefore can instruct us in our choice! If the premises were sound, a precisely opposite conclusion would clearly follow; for, in the first instance, not being able to make laws, the people might well be supposed to constitute us their agents to act for them, and therefore, to a certain extent, retaining the right to exercise a reasonable influence over our conduct; but, in the other case, having the right to make a President for themselves, and failing to do so, they could not claim to direct us, who are not acting for them, but for ourselves and the nation at large. The argument, however, is not well founded.

The theory of our Government, it is true, is, that all power is in the people, and derived from the people—but they never act themselves, excepting in their electoral franchise. They act through the different organs and functionaries of the Government, appointed by the constitution and the laws, and they have no proper right to act in any other way. These functionaries are always responsible for a wise and faithful discharge of their various duties, but

cannot be instructed in their exercise. The Congress are authorized to pass laws; and the judicial power to execute them—the people give the power to both, but they cannot properly instruct either.

But, said Mr. McL., the gentleman from South Carolina further argued, that the will of the people is the paramount law, according to what he was pleased to term the philosophy of the constitution—to this the representative is bound to yield his judgment and conscience; and shame, and disgrace, and infamy, are denounced as the portion of him who shall venture to obey his own sense of right in opposition to this will! Before he could recognize a power so absolute, Mr. McL. said, he was disposed to examine its source and character. He would make no lofty professions of regard for the will of the people, according to the phrase of the day. Nothing was more easy, however—nothing more common—it was the ordinary theme of all political declamation. It is the common price of power, and paid most liberally by those who most covet it. We scarcely read of a tyrant, the first page in whose history is not filled with hallelujahs to the people's will. Sir, said he, ambition seeks not to be governed, but to govern; to govern the people; and it flatters the people to put more power over them. But, it is the wild tumultuous will that is thus courted; that which springs from sudden excitements, irregular ebullitions, stirred up by practical causes, and confined to particular districts. Of this false image of the people's will he was no worshipper: while, for the real will of the people, he sincerely felt a profound reverence. I mean, said he, the will of a *majority* of the people, *constitutionally* expressed, in the mode prescribed by the laws. It is this will which is the great moral and political power on which the Government reposes. It is this will which comes in the panoply of the constitution, and should be a law to all. He would recognize no other will of the people, than that so made manifest; every thing else was but its counterfeit. For this constitutional will, we manifest our respect, by cherishing and sustaining the institutions of its creation. And of his respect, he said, he would give a practical proof, by yielding a generous support to the man on whom the constitutional manifestation of this will should rest, supporting him when right, and opposing him when wrong.

The gentleman from South Carolina says, the election of the President by the people, is the best mode which human wisdom can devise. I may admit the position, but what follows? The constitution supposes it the best, and, therefore, resorts to it in the first instance; but it also supposes it may fail in its object. It requires a majority of the people in favor of some one candidate, to make an election; it supposes this majority unattainable, and, in such an event, which has now happened, directs a new mode of election, and by a different power. I ask gentlemen

to look into the constitution, and see what restrictions are imposed upon the exercise of this power. There is none but the number to which the choice is limited. Within this number it is in vain to shackle our discretion.

The constitution meant, and for wise purposes, that the direct agency of the people, in this election, should cease after the result of the electoral votes, and that, in the new and further election, the federative principle of the Government should operate—rejecting all influence from numbers and the weight of population. It became absolutely necessary to resort to such a principle, to promote and ensure an election, by disregarding the causes which had prevented it in the electoral colleges. It designed to remove us from that very influence which had defeated the will of the majority. By giving each State a vote, without regard to its population, the electoral combinations or disagreements are broken up, and a new principle established. But the doctrine contended for, by the gentleman from South Carolina, brings the force of the population, in the worst and most irregular form, to operate on the election here, and disappoint the great object of the change.

Sir, said Mr. MOLLANE, it is plain, that, if the constitution had deemed the further agency of the people essential, or even proper, it would not have devolved the election upon us, where the largest and smallest State is upon an equality, but would have sent it back to the people for a new effort. It would have remitted the choice to them with the same restriction as to the number of candidates, or it would have sent the election to us, to be made in proportion to the numbers of each State on this floor.

If it were deemed inexpedient to send the choice back to the people, for a constitutional expression of their preference, it cannot be wise to control it here by a loose manifestation, or by vague and speculative conjectures.

The gentleman from South Carolina, said Mr. MOLL., has spoken of an "inchoate election." He says the people have commenced the choice, and that we are only to complete what they have begun. He did not, he said, entirely comprehend the force of these remarks. If they were designed to argue that we should begin where the people had left off, pushing the highest by preference to the others, he could not assent to the proposition. Such an idea was as impracticable as it would be to add States to individual votes. But the act of the people, he contended, was complete, and their power at an end. Their act was to ballot for a choice—if any one received a majority, the election was complete. If such a majority did not appear, the failure was as complete. He contended that the people were done with the matter; it was no longer in their hands; it had passed into ours, accompanied with a deep responsibility, which we could not otherwise discharge, than by an honest, conscientious performance of our duty, according to our own honest judgment.

What then, said Mr. MOLLANE, are our rights

and duties in this matter? The constitution, by which they are prescribed, provides, that if no person shall have a majority, then, from the persons having the highest numbers, not exceeding three, the House of Representatives shall choose, immediately, by ballot, the President. The time of making this choice, does, of itself, exclude the idea of any interference of the people by instructions. The House are to proceed immediately to the performance of their duty, making it impossible to procure any concerted or regular movement by the people to express their wish. Any other than such, would be worse than folly—it would be delusive and dangerous.

But the House of Representatives are to choose a President. This is both a right and a duty. The right of choosing, implies the right of selection—it implies, also, discretion; the exercise of an unbiased judgment, the duty of considering the fitness and qualifications of the respective candidates, their comparative merits, their capacity to sustain the institutions of the country, to promote the safety and happiness of the people at home, and the honor and glory of the nation abroad; in short, sir, it necessarily implies the right of considering every thing which fairly appertains to the preference to be ultimately declared. It is our duty to examine and deliberate upon every thing connected with the subject, in reference to the object to be attained. Are gentlemen willing to have this great duty resolved into a simple inquiry into personal popularity? of which of the three our particular constituents might prefer? or which would be most popular in a given district or State? Such an inquiry would divert us entirely from the merits of the candidates, and lead us into a field where everything is doubt and conjecture. What, said he, are the powers of the people, when they are making the election, and by what motives are they to be supposed to be influenced in their choice? There are no limits to their power; they may even indulge in whim and caprice; but a wise, and virtuous, and intelligent, and patriotic people, must be presumed to be guided in their choice by the character and fitness of the candidate. They look for a Chief Magistrate capable of presiding with safety and honor over the destinies of the country, and less power than they possess over the subject, would be inadequate to the object—would impair their elective franchise! Have we not the same duties to perform, the same objects to attain, and are we clothed with less power and fewer means for their attainment? Could it have been the design of this constitution to commit this high trust to our hands, and leave us dependent upon the will or caprice of others for its execution? It is our duty, and our right to "choose;" but, if we are liable to be instructed, nay, commanded in our choice, the choice is not ours, but theirs who instruct us; it is not a free and independent selection, but obedience to the commands of a superior.

This doctrine of the plurality preference and

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of instruction, would naturally lead to the most dangerous consequences, and defeat one great object of confiding the choice to us. It holds all our information and experience for naught, and deprives the people of all advantage from the very qualities for which they have selected us for this duty. It can rarely happen that the people of these States can have a full knowledge of the character and principles of men who may be presented for their suffrages. They judge from the representations of others, or from some single glaring or striking act,

The preference is no doubt founded upon his supposed fitness and capacity. They believe him to be a wise, enlightened, and virtuous statesman, sound and practical in his views, and deserving their confidence. But, is it not possible for all these calculations to prove unfounded? Let me suppose, sir, said he, that we, who may be better acquainted with the individual, when we came to inspect his character and test his fitness, find that he is in reality distinguished for no one virtue, for which the people preferred him; that, in our consciences, we should be persuaded he was wholly incapable of administering the Government—what would the gentleman from S. C. do in such a case? Would he surrender his judgment and conscience to the mistaken preference of his constituents, or fearlessly consult his higher duty to his country?

It was no stretch of the imagination, said Mr. McLANE, for him to suppose further, that some one candidate, returned to the House of Representatives, should be discovered in the use of improper means to promote his elevation: the patronage of his office may have been held out in anticipation, and indications of a policy and administration injurious to the great interests of the nation. In such a case, who could hesitate between the mandate of his instruction, and his duty to the nation?

Sir, said Mr. McLANE, the only true and safe course, is to treat this body as an independent tribunal, bound to elect the man best qualified, in their judgment, to administer the affairs of the nation.

If we are bound by instructions, who have the right to instruct us? It has been already shown, that the election here is *federative*, and not by *numbers*; the votes are by *States* and not by the *People*. We are called to perform this duty for the whole nation, not for any part of it; for all the States, and not for any one in particular. When we enter upon this duty, we lose our relation to our immediate constituents, and are charged with a duty for the whole Union. We become the judges and umpires of the *whole*; we are to act for the interests of the *whole*.

It is in this way only, that the equality of the votes of States here, can be reconciled with the general theory of the Government. If I act here under the instruction and dominion of Delaware, the population of that State controls tenfold its numbers elsewhere. But, if I act here, under no more particular responsibility to my immediate constituents in Delaware, than to the

rest of the Union, and consulting the interests of the whole, this disparity, which has been so much complained of, disappears.

If in this election I preserve my ordinary relation to the people of Delaware, then to them only am I responsible, and upon *their* instructions only, are obligatory. What then becomes of the plurality vote, if their instructions command me to disregard and disobey it.

According to the theory for which he contended, said Mr. McLANE, the duty of a member of this House is that of a great moral agent, looking, with a single eye, to the welfare of a common country, and guided by considerations of a similar kind. He acts fearlessly and independently to the attainment of that end: if he fail, from weakness of character, or through corrupt means, and give just offence, or produce injury to the people, the remedy is found in the elective power of the people. It is the ultimate remedy for all evils and abuses in the Government, and will never prove inefficacious as long as each public functionary shall be kept within its appropriate sphere. There is force enough in it to secure an honest discharge of our duty—it is terrible only to evil-doers. If it be rashly or vindictively applied, it deprives us of the honor of a seat here; but it leaves us in possession of that which is of far more value, and well calculated to alleviate the loss of place. I do not say that the honor of a seat in this House is to be lightly esteemed, or that he who could not surrender it without regret, would be unworthy of its occupation; but I will say, that it is not likely to be honored by him who would be incapable of performing its duties with an honest independence. Mr. McLANE said he was not ambitious of figuring in an opposition to the popular clamor, nor was he at all disposed to court responsibility; but he would not shrink from it, when it came upon him, and he could imagine it to be sometimes a virtue to oppose even the wildest tumult. It behooved every man placed in such a station to meet the crisis with calmness and fortitude; to throw his eyes abroad over the whole scene, and do the best for the safety and happiness of the whole. It would ill become us, he said, in such a crisis, to be found timid and wavering, infirm of purpose, bending to the storm, or yielding our judgments to the commands of others.

Our great duty, upon such an occasion as the present, was to compose difficulties, not to heighten them with others, or to be agitated by them ourselves. The supposition is, when the election of a President devolves upon this House, that the public voice has been distrusted and distracted by serious and unavoidable difficulties: by the number of candidates, personal predilections, and hostility; local views and sectional jealousy; party feelings and factional excitement. By these and other causes, the public mind may have been thrown into the most bitter and violent commotion, alarming to both social and public tranquillity. The

constitution erects this House into a high and sacred tribunal, to compose and quiet these angry elements—to allow time for their fury to subside—to bring order out of confusion. We should be false to ourselves and to the country, if, instead of doing so, we should launch forth upon this wild ocean, and fret and vex it afresh. It is not for me to say how surely this would be done by bringing public excitement to operate upon our deliberations in such an election.

Then, sir, said Mr. McLANE, if I be correct in the views I have taken of the rights and duties of the House of Representatives in this election, does it not follow, that all attempts to control, or sway, or intimidate the free exercise of our sober, independent judgment, are indecorous and improper? He would not now detain the House, after the time he had already consumed, in detailing the various means which might be employed, and the different kinds of influence which might be brought to control the independence of members. It was unnecessary for him, he said, to describe the effects of all those popular engines which a state of high public excitement always puts in motion, and which, from the seeds sown in county meetings, to the fruits appearing in the persons of self-constituted committees, which may daily surround this Hall, were constantly operating. We guard the election by the people, said he, from all tumult and disorder, and carefully banish all illegitimate influence at a distance. Why are we fearful of surrounding our own liberties with equal security? The character of all these influences is progressive; and the most fearful apprehensions entertained, by able commentators upon our constitution, of an election by the House of Representatives, have been from the effect of these extraneous influences, both civil and military, which may easily be put in motion. Mr. McL. said he had no apprehension of such evils at the present day; but he repeated, that now, when every thing was comparatively tranquil and secure, was the most suitable time to make provision for the day, when the tempers of gentlemen would be less calculated for cool deliberation. If the people had no power to interfere with our conduct, they could claim no right to superintend our deliberations. He had as little at stake as others, however, and should submit, with as good a grace, to the decision of the House.

Mr. WEBSTER then rose, and said, that the precise question before the committee, as he understood it, was on expunging that part of the third rule to be observed in conducting the approaching election, which prescribes that the galleries of this House, which at first are to be open to the public, may be cleared at any time pending the election, at the request of the delegation of any one State. If the motion obtains, the standing rule of the House on this subject will then be in order, which is, that the Speaker, as a matter of duty, and a matter of course, may cause the galleries to be cleared whenever any disorder, on the part of those

who attend there, shall, in his opinion, render it expedient and proper. So that, in fact, the question before the committee, which has been, he would not say, the subject, but which has been the occasion of such an extended discussion, is simply this, whether the power of clearing the galleries, in case of disorder, shall rest with the Speaker of the House, or with the delegation from a State. This is the precise question, which the committee have to decide. A very broad discussion had been gone into, as to the effect of those various considerations which ought to influence a member of this House in giving his vote. As constituting, either in whole or in part, the delegation of a State, he would not say that the arguments which had been brought forward had not any relation to each other. But he must say, that their relation to the question before the committee, was but slight. The question had been treated with a view to national considerations, but it must be extremely evident, that the House could not prescribe how much relative consideration ought to be given to one, and how much to another of these considerations. And in such a case each member must judge for himself, what degree of respect is due to this or that mode of expressing public opinion. Whether he shall have regard to public opinion as it now is, or as it will soon be; on every question of this kind, each man must decide for himself. A course of remark has been gone into, historical allusions had been made, and not very slight denunciations had been uttered, in relation to a former precedent, to all which it might be expected that he should make some reply; and he certainly felt, as was natural in his circumstances, a strong desire to do so; but he was restrained from indulging this desire, by what he considered to be his duty to the House. It must be, by this time, perfectly evident, that no valuable result could be obtained by the most protracted discussion; and he would submit to the candor of gentlemen the propriety of making some disposition of the subject before them, without further delay. He hoped that the motion he was about to make would be received in the spirit in which it was made. The House was on the eve of a great and interesting duty. It was indispensable that some rules of proceeding should previously be adopted. With respect to the particular rule now in discussion, he considered it as very unimportant in itself. If important at all, it had only been made so by the discussion of which it had been made the subject. Rather than spend ten minutes more of the time of the House, he would, for himself, willingly consent, that the power in question should remain with the Speaker, or should be given to the delegation of a State. He, therefore, moved that the committee do now rise, and that the residue of the rules should be determined on in the House.

The motion was agreed to, and the committee then rose, reported progress, and were re-



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fused leave to sit again: and the committee was discharged from the further consideration of the subject.

On motion of Mr. COOKE, the Committee of the Whole on the State of the Union, were discharged from the further consideration of the rules referred to; and they were laid on the table. They were then taken up and read in order. The first rule is in the following words:

"1st. In the event of its appearing, on opening all the certificates, and counting the votes given by the electors of the several States for President, that no person has a majority of the votes of the whole number of the electors appointed, and the result shall have been declared, the same shall be entered on the journals of this House."

This rule, having been read, was agreed to.

The second rule, on motion of Mr. BASSETT, was amended, by inserting, after the word "called," the words "by States;" and thus amended, it read as follows:

"2d. The roll of the House shall then be called, by States, and, on its appearing that a member or members from two-thirds of the States are present, the House shall immediately proceed, by ballot, to choose a President from the persons having the highest numbers, not exceeding three, on the list of those voted for as President; and in case neither of those persons shall receive the votes of a majority of all the States on the first ballot, the House shall continue to ballot for a President, without interruption by other business, until a President be chosen."

And, thus amended, it was agreed to.

The third rule having been read, a motion was made to strike out the last clause, which orders the galleries to be cleared at the request of the delegation of any one State.

On this question, Mr. McDUFFIE rose, and observed, that he left it to the House to determine on whom the responsibility rested, of giving to the present discussion the extensive range which it had taken. For himself, he had adopted as a constant rule, not to consume the time of the House by any remarks which had not a direct reference to the subject before it, or which were not drawn out by topics brought into the discussion by other gentlemen. As to the present discussion, he had considered the gentleman from Delaware as assuming, at the commencement of it, as the ground on which he thought it wise policy to clear the galleries, that members of this House, when engaged in electing a President, did not act as the delegates of the people, and were not responsible to them. The reply which he himself had made, was directed only to this principle. It went no further. In replying to his remark, the gentleman from North Carolina and the gentleman from Delaware, had extended the discussion still further, and had made a theoretical discussion of the powers of the House to bear on the question immediately before it. And now, at the close of one of the most eloquent and imposing arguments ever delivered in this House, a member rises in his place and suggests the impolicy of continuing

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the argument. He felt very great respect for that member, but he considered the matter to be discussed as of the greatest importance. The principle laid down had a very wide and extensive bearing, and he felt it his duty to submit to the dictates of his own judgment, and give the principle that discussion which he considered it entitled to receive. The responsibility rested upon him, and he well knew the impatience of the House, and was aware of the lateness of the hour; but he was compelled, notwithstanding these disadvantages, to go into the argument, and to reply both to the gentleman from North Carolina and the gentleman from Delaware.

Both of those gentlemen had put cases, urged with a great deal of ingenuity, to show that the doctrine for which he contended, viz: that, in electing a President, the people have a right to instruct their delegates, would operate, in practice, to defeat the election. Sir, said Mr. McD., if that consequence can be shown to be fairly deducible from the principle I advocate, I will abandon it. But I think, that, so far from this being the case, the danger exists only in the imagination of the gentlemen who urge it. What is the case supposed by the gentleman from North Carolina? That there are three candidates; and that eight States vote for each of them. Well, take that case. The gentlemen say, if the people have a right to instruct their delegates, then, instructions once given, cannot be resisted, and so the delegate must go on voting to the end, for the candidate designated by his own State, and thus the election will be prevented altogether. But this statement arises from an entire misapprehension of the ground I take. I did not contend that the delegate must go on voting to the end as he began, and so defeat the election. I only contended that the popular will of the State is as binding on me, as they say the dictate of conscience is binding on them.

I will, therefore, turn the gentlemen's case upon themselves. Suppose there are three candidates, and the members from eight States hold themselves bound in conscience to vote each of them, can there be an election in this case? No, sir. They say, that if the popular will is to bind me, I must continue to submit to it. Well, sir, if conscience is to bind them, they must continue to submit to it. I do not say that the people have a legal right to instruct their delegates, but—

[Here, Mr. WEBSTER observed, that he rose with great pain. He hoped the gentleman from South Carolina would do him the justice to believe, that nothing but an imperious conviction of duty induced him to interrupt an argument which he knew it would give him pleasure to hear, but he submitted whether it was in order to go into an argument in the House in reply to an argument urged in Committee of the Whole, any more than if it had been urged in a select committee.]

The SPEAKER decided that the observations



of Mr. McDUFFIE were not in order, on the ground stated, and that they were not in order for another reason, viz: that the whole scope of the debate was irrelevant to the question actually before the House.

Mr. McDUFFIE, upon the latter ground, submitted to the decision of the Chair.

The question was then put on the amendment, and *carried*.

Mr. WRIGHT moved further to amend the rule, by inserting, after the words "Senators," the words "Stenographers;" which was carried.

And the rule, as amended, was adopted, and read as follows:

"8d. The doors of the Hall shall be closed during the balloting, except against members of the Senate, stenographers, and the officers of the House."

The fourth rule was then read, and adopted as follows:

"4th. From the commencement of the balloting, until an election is made, no proposition to adjourn shall be received, unless on the motion of one State, seconded by another State; and the question shall be decided by States. The same rule shall be observed in regard to any motion to change the usual hour for the meeting of the House."

The fifth rule was then read, in the words following:

"5th. In balloting, the following mode shall be observed, to wit:

The Representatives of each State shall be arranged and seated together, beginning with the seat at the right hand of the Speaker's chair, with the members from the State of Maine; thence proceeding with the members from the States in the order the States are usually named for receiving petitions, around the hall of the House, until all are seated.

A ballot-box shall be provided for each State.

The Representatives of each State shall, in the first instance, ballot among themselves, in order to ascertain the vote of their State, and they may, if necessary, appoint tellers of their ballots.

After the vote of each State is ascertained, duplicates thereof shall be made out, and, in case any one of the persons from whom the choice is to be made, shall receive a majority of the votes given, on any one balloting, by the Representatives of a State, the name of that person shall be written on each of the duplicates; and, in case the votes so given shall be divided, so that neither of said persons shall have a majority of the whole number of votes given by such State on any one balloting, then the word "*divided*," shall be written on each duplicate.

After the delegation from each State shall have ascertained the vote of their State, the Clerk shall name the States in the order they are usually named for receiving petitions; and as the name of each is called, the Sergeant-at-Arms shall present to the delegation of each two ballot-boxes, in each of which shall be deposited, by some Representative of the State, one of the duplicates made as aforesaid, of the vote of said State, in the presence, and subject to the examination of all the members from said State then present; and, where there is more than one Representative from a State, the duplicates shall not both be deposited by the same person.

When the votes of the States are thus all taken in, the Sergeant-at-Arms shall carry one of the said ballot-boxes to one table, and the other to a separate and distinct table.

One person from each State, represented in the balloting, shall be appointed by its Representative to tell off said ballots; but, in case the Representatives fail to appoint a teller, the Speaker shall appoint.

The said tellers shall divide themselves into two sets, as nearly equal in number as can be, and one of the said sets of tellers shall proceed to count the votes in one of said boxes, and the other set the votes in the other box.

When the votes are counted by the different sets of tellers, the result shall be reported to the House, and if the reports agree, the same shall be accepted as the true votes of the States; but, if the reports disagree, the States shall proceed, in the same manner as before, to a new ballot."

Mr. HAMILTON, of South Carolina, then moved to amend this rule, by striking out what follows the words, "a ballot-box shall be provided for each State," and inserting the following:

"Labelled, with the name of the State, placed in front of the Speaker's chair, on the Clerk's table—placed in the order of the States. The Clerk shall then proceed to call each delegation in the order in which petitions are called, and the member of each delegation shall place his ballot in the box labelled with the name of the State. After all the States have thus voted, then the members of each delegation shall nominate a member of their delegation to act as teller, who shall proceed, with the rest of the tellers appointed by the several delegations, to count the votes of each State, commencing in the order in which they are called; at the close of which count, the separate vote of each State shall be declared by the senior member of the Committee of tellers, as well as the result of the aggregate ballot. Should the delegation of any State fail to appoint a teller, then the Speaker shall nominate one, and where there is but one member of a State, he shall act as teller. These rules shall be observed in each successive ballot, until a choice is produced, in conformity with the provisions of the Constitution of the United States."

Mr. HAMILTON rose, and observed that, in offering this amendment, he disclaimed any intention to provoke a debate on a subject which might be susceptible of extended and various considerations. My object (said Mr. H.) is to endeavor to adopt, within the provisions of the constitution, some mode by which the vote of each State (not the members of the several States) may be ascertained. To the members composing the delegations I know that the privilege of a secret ballot is secured. This I do not propose to violate; but I do propose that some mode should be adopted, by which the vote of the State, when given, should be put on record on the journals of this House, and the people be enabled, in an authentic form, to know how their Representatives have given the vote of the States which they represent.

Now, by the mode reported by the committee, there are to be twenty-four distinct and se-

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cret colleges, each State acting under its own discretion, and the strange result might occur, that, in one delegation, blank votes would be counted, and, in another, rejected, and by this clashing it might, in effect, arise that an election should be produced, which was not the result of a majority of the States.

The amendment he had submitted, provided that the vote of each State should be in a separate ballot-box, and be thus told and declared. He felt satisfied that, although it seemed in its operation to disclose the vote of a member, when that person represented alone a whole State, yet this was an accident either of good fortune or bad, according to the pride and regret with which such gentlemen might view their situation. Besides, he did not suppose that any gentleman on that floor would desire to have any result, produced by his acts, attributed to another, which, in the portentous darkness which was about to veil their proceedings, in relation to the mode of balloting, might occur.

In conclusion, he would say, that we were bound, as far as it was admissible, within the secret ballot, according to each member, to allow the people to understand, at least in our condescension, how the vote of their different States have been given, in a shape more authentic than rumor, or even a newspaper report. He defied any man, in the odious contest of 1801, to determine how the States had voted, from the journals of this House; and he thought such a mysterious mode of choice suited rather the muffled secrecy of a Venetian Senate, than an assembly representing a free people. Let us have no approach, even in appearance, in our transactions on this eventful occasion, to that terrible image of jealousy, secrecy, and prostration of public freedom, exhibited by the brazen lion of Venice, which, with his gaping mouth, receives a vote which comes whence nobody knows, and for which nobody is responsible.

Mr. WEBSTER requested leave to make a single remark, which might save further discussion. The rule, as proposed by the gentleman from South Carolina, would be in direct violation of the constitution. The constitution says, that the States shall vote by ballot. But the proposed amendment would defeat that intention. Some of the States are represented only by a single delegate; and, if the proposed amendment prevailed, each of these gentlemen is compelled to declare in what way he has voted.

The question was then put on Mr. HAMILTON's amendment, and decided in the negative. Ayes 52—Noes 115.

And the rule, as above stated, was agreed to.

The remaining rules were then successively read, and adopted, as follows:

6th. All questions arising after the balloting commences, requiring the decision of the House, which shall be decided by the House voting per capita, to be incidental to the power of choosing a

President, shall be decided by States without debate; and in case of an equal division of the votes of States, the question shall be lost.

7th. When either of the persons from whom the choice is to be made, shall have received a majority of all the States, the Speaker shall declare the same, and that that person is elected President of the United States.

8th. The result shall be immediately communicated to the Senate by message; and a committee of three persons shall be appointed to inform the President of the United States, and the President elect, of said election."

And then the House adjourned.

TUESDAY, February 8.

Mr. TAYLOR, from the Joint Committee, appointed to consider the mode of counting the votes for President and Vice President of the United States, made a report, in part; which was read.

[The report is the same as that stated in the Senate proceedings.]

The House agreed to the resolutions reported, and Mr. P. P. BARBOUR and Mr. TAYLOR were appointed Tellers according thereto.

WEDNESDAY, February 9.

*Election of President by the House of Representatives.*

At twelve o'clock, precisely, the members of the SENATE entered the Hall, preceded by their Sergeant-at-Arms, and having the PRESIDENT of the Senate at their head, who was invited to a seat on the right hand of the SPEAKER of the House.

Seats were then assigned the Senators, who took their seats together, in front of the Speaker's chair, and toward the right hand of the entrance.

The President of the Senate (Mr. GAILLARD) then rose, and stated that the certificates, forwarded by the Electors from each State, would be delivered to the Tellers.

Mr. TAZEWELL, of the Senate, and Messrs. JOHN W. TAYLOR and PHILIP P. BARBOUR, on the part of the House, took their places, as Tellers, at the Clerk's table. The President of the Senate then opened two packets, one received by messenger, and the other by mail, containing the certificates of the votes of the State of New Hampshire. One of these was then read by Mr. TAZEWELL, while the other was compared with it by Messrs. TAYLOR and BARBOUR. The whole having been read, and the votes of New Hampshire declared, they were set down by the Clerks of the Senate and of the House of Representatives, seated at different tables. Thus the certificates from all the States were gone through with.

The Tellers then left the Clerk's table, and presenting themselves in front of the Speaker, Mr. TAZEWELL delivered their report of the votes given; which was then handed to the President of the Senate, who again read it to the two Houses, as follows:

STATE.	FOR PRESIDENT.				FOR VICE PRESIDENT.					
	John Quincy Adams.	William H. Crawford.	Andrew Jackson.	Henry Clay.	John C. Calhoun.	Nathaniel Macon.	Andrew Jackson.	Nathan Sanford.	Henry Clay.	Martin Van Buren.
Maine.....	9	0	0	0	9	0	0	0	0	0
New Hampshire.....	3	0	0	0	7	0	1	0	0	0
Massachusetts.....	18	0	0	0	15	0	0	0	0	0
Rhode Island.....	3	0	0	0	3	0	0	0	0	0
Connecticut.....	3	0	0	0	3	0	0	0	0	0
Vermont.....	7	0	0	0	7	0	0	0	0	0
New York.....	26	0	0	0	29	0	0	0	0	0
New Jersey.....	0	0	0	0	3	0	0	0	0	0
Pennsylvania.....	0	0	28	0	28	0	0	0	0	0
Delaware.....	1	0	0	0	1	0	0	0	0	0
Maryland.....	3	0	0	0	10	0	1	0	0	0
Virginia.....	0	24	0	0	0	24	0	0	0	0
North Carolina.....	0	0	15	0	15	0	0	0	0	0
South Carolina.....	0	0	11	0	11	0	0	0	0	0
Georgia.....	0	0	0	0	0	0	0	0	0	0
Kentucky.....	0	0	0	14	7	0	0	7	0	0
Tennessee.....	0	0	11	0	11	0	0	0	0	0
Ohio.....	0	0	0	16	0	0	16	0	0	0
Louisiana.....	2	0	0	0	5	0	0	0	0	0
Mississippi.....	0	0	0	0	3	0	0	0	0	0
Indiana.....	0	0	0	0	5	0	0	0	0	0
Illinois.....	1	0	0	0	3	0	0	0	0	0
Alabama.....	0	0	0	0	5	0	0	0	0	0
Missouri.....	0	0	0	0	0	0	3	0	0	0
Total.....	84	41	99	87	182	24	18	80	2	9

The President of the Senate then rose, and declared that no person had received a majority of the votes given for President of the United States; that ANDREW JACKSON, JOHN QUINCY ADAMS, and WILLIAM H. CRAWFORD, were the three persons who had received the highest number of votes, and that the remaining duties in the choice of a President now devolved on the House of Representatives. He further declared, that JOHN C. CALHOUN, of South Carolina, having received 182 votes, was duly elected VICE PRESIDENT OF THE UNITED STATES, to serve for four years from the 4th day of March next.

The members of the Senate then retired.

The SPEAKER directed the roll of the House to be called by States, and the members of the respective delegations to take their seats in the order in which the States should be called, beginning at the right hand of the Speaker.

The roll was called accordingly, when it appeared that every member of the House was present, with the exception of Mr. GARNETT, of Virginia, who was known to be indisposed at his lodgings, in this city.

The delegations took their places accordingly, ballot-boxes were distributed to each delegation, by the Sergeant-at-Arms, and the Speaker directed that the balloting should proceed.

The ballots having all been deposited in the boxes, the following Tellers were named by the respective delegations, being one from each State in the Union:

Mr. Cushman,  
Livermore,

Mr. Hooks,  
Campbell,

Mr. Webster,  
Eddy,  
Tomlinson,  
Buck,  
Taylor,  
Condict,  
Ingham,  
McLane,  
Kent,  
Randolph,

Mr. Forsyth,  
Trimble,  
Allen, of Tenn.,  
Sloane,  
Livingston,  
Rankin,  
Jennings,  
Cook,  
Owen,  
Scott.

Mr. WEBSTER, of Massachusetts, was appointed by those Tellers who sat at one table, and Mr. RANDOLPH, of Virginia, by those at the other, to announce the result of the balloting. After the ballots were counted out, Mr. WEBSTER rose, and said—

“Mr. Speaker: The Tellers of the votes at this table have proceeded to count the ballots contained in the box set before them. The result they find to be, that there are—

For JOHN QUINCY ADAMS, of Massachusetts, 13 votes.

For ANDREW JACKSON, of Tennessee, 7 votes.

For WILLIAM H. CRAWFORD, of Georgia, 4 votes.

Mr. RANDOLPH, from the other table, made a statement corresponding with that of Mr. WEBSTER, in the facts, but varying in the phraseology, so as to say that Mr. Adams, Mr. Jackson, and Mr. Crawford, had received the votes of so many States, instead of so many votes.

The SPEAKER then stated this result to the House, and announced that JOHN QUINCY ADAMS, having a majority of the votes of these United States, was duly elected President of the same, for four years, commencing with the 4th day of March next.

On motion of Mr. TAYLOR, of New York, a committee was ordered to be appointed, to notify the President of the United States, and the President elect, of the result of the ballot.

And then the House adjourned.

[When the fact of Mr. Adams having 13 votes was announced by the Tellers, some clapping and exultation took place in the galleries, and some slight hissing followed. The House suspended its proceedings until the galleries were cleared.]

THURSDAY, February 10.

Mr. JENNINGS, of Indiana, submitted the following:

“Resolved, That the Committee of Ways and Means be instructed to inquire into the expediency of releasing, by law, all claim which the United States have upon Maston S. Clarke, of the State of Indiana, as one of the securities of the late Collector of the Internal Revenue of the late Territory of Indiana.”

In offering this resolve, Mr. J. said that the individual referred to in the resolution he had presented, was allied to one of the most numerous and useful families in the Western country. That he had been one of the early pioneers of the western frontier, participated in most of the

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*Road from Pensacola to St. Augustine.*

[H. OF R.]

conflicts produced by the wars with the Indians, and had acted a conspicuous part in the battle of Tippecanoe, as well as on other similar occasions; and who, by his perseverance and enterprise, had possessed himself of a comfortable competency for his numerous and rising family. This, said Mr. J., was his situation when he became one of the securities of a late Collector of the Internal Revenue of the Territory of Indiana, who has since, by a decision of the District Court, been found a delinquent to a considerable amount—the result of which has been, that Col. Clarke has been, by the operation of law, stripped of all his property, both real and personal, not leaving to him so much as the sword he had honored, or his tomahawk and scalping-knife, which had been his constant companions as a private soldier. He hoped the resolution would be adopted.

The resolve was agreed to.

*Letter from the President Elect.*

Mr. WEBSTER, from the committee appointed for the purpose, yesterday, reported that the committee had waited on JOHN QUINCY ADAMS, of Massachusetts, and had notified him, that, in the recent election of a President of the United States, no person having received a majority of the votes of all the electors appointed, and the choice having consequently devolved upon the House of Representatives, that House, proceeding in the manner prescribed in the constitution, did yesterday choose him to be President of the United States, for four years, commencing on the fourth day of March next. And that the committee had received a written answer, which he presented to the House. The committee also, in further performance of its duty, had given information of this election to the President.

*Gentlemen:* In receiving this testimonial from the Representatives of the people, and States of this Union, I am deeply sensible to the circumstances under which it has been given. All my predecessors in the high station to which the favor of the House now calls me, have been honored with majorities of the electoral voices in their primary colleges. It has been my fortune to be placed by the divisions of sentiment prevailing among our countrymen on this occasion, in competition, friendly and honorable, with three of my fellow-citizens, all justly enjoying, in eminent degrees, the public favor; and of whose worth, talents, and services, no one entertains a higher and more respectful sense than myself. The names of two of them were, in the fulfilment of the provisions of the constitution, presented to the selection of the House, in concurrence with my own; names closely associated with the glory of the nation, and one of them, further recommended by a larger minority of the primary electoral suffrages than mine.

In this state of things, could my refusal to accept the trust thus delegated to me, give an immediate opportunity to the people to form and to express with a nearer approach to unanimity, the object of their preference, I should not hesitate to decline the acceptance of this eminent charge, and to submit the decision of this momentous question

again to their determination. But the constitution itself, has not so disposed of the contingency which would arise in the event of my refusal; I shall, therefore, repair to the post assigned me by the call of my country, signified through her constitutional organs; oppressed with the magnitude of the task before me, but cheered with the hope of that generous support from my fellow-citizens, which, in the vicissitudes of a life devoted to the service, has never failed to sustain me—confident in the trust, that the wisdom of the Legislative Councils will guide and direct me in the path of my official duty, and relying, above all, upon the superintending providence of that Being “in whose hand our breath is, and whose are all our ways.”

Gentlemen: I pray you to make acceptable to the House, the assurance of my profound gratitude for their confidence, and to accept yourselves my thanks for the friendly terms in which you have communicated to me their decision.

JOHN QUINCY ADAMS.

*Washington, February 10th, 1825.*

*Road from Pensacola to St. Augustine.*

On motion of Mr. CALL, of Florida, the House went into Committee of the Whole, Mr. TOMLINSON in the chair, on the bill to provide additional appropriations to complete the public road from Pensacola to St. Augustine, in Florida; and also on the bill to authorize the surveying and laying out of a road from St. Mary's River to Tampa Bay, in the Territory of Florida. Mr. C. moved to fill the blank for the sum appropriated by the first of these bills, with \$8,000; which was carried. He then moved to fill the blank in the second bill with \$12,000.

On this motion, Mr. McCOR inquired of the delegate from Florida, with respect to the necessity for the road, its proposed length, and whether the present sum would be sufficient to complete it.

Mr. CALL, in reply, requested the reading of a letter at the Clerk's table. He then rose in his place, and stated, that, at last session, a road had been authorized to be made from Cape Sable, the southern extremity of Florida, to the Bay of Tampa, which is on its western coast, and also the marking out a road from St. Augustine to Pensacola. It was now proposed to complete the latter road, which had been marked out, and also to extend the road now running from Cape Sable to Tampa Bay, northwardly, from Tampa Bay to St. Mary's River, where it would meet a road now existing in Georgia. Its length would be about two hundred miles, the whole of which distance it would pass through the public lands, and would thereby greatly enhance their value. He adverted to the difficulty of suppressing piracy in the Gulf of Mexico, Tampa Bay, (which was the best harbor in the south of Florida,) being a notorious rendezvous for pirates, as well as for fugitive slaves from Georgia, the Government had found it necessary to establish a military post there. The post, which is to be a permanent one, was now completely isolated. Neither road nor trace led to it, and it had no means of communicating with the Government itself,

except by a long and dangerous sea voyage, which would cost more in a single year, than the whole sum now asked for this road. Another consideration was that of passing along the coast; it ran near to numerous inlets, now the haunts of pirates and slaves. The presence of this road would be an effectual, and the only effectual means, of breaking up their resort to these places. In a state of war, the Bay of Tampa would be a very important post. As such, the Government had selected it; and it was manifest, that, unless a road was formed, by which troops could march for its relief, it must fall an easy prey as soon as it should be invested by a maritime enemy. The country through which it is to pass, is one of the most fertile regions of the South. Nothing was wanted but a highway, to ensure its rapid settlement. He hoped, therefore, that, whether the road was considered as providing for the defence of a distant and vulnerable frontier, or as calculated to increase the value of the public lands, the sum necessary for its construction would readily be granted by the House. He added, in conclusion, that the plan had been examined by the Committee on Roads and Canals, and received its unanimous approbation.

The blank was then filled accordingly.

The committee then rose, and reported both bills, and they were ordered to be engrossed for a third reading to-morrow.

MONDAY, February 14.

*Georgia Militia Claims.*

On motion of Mr. TATNALL, of Georgia, the House then took up the report of the Committee on Military Affairs, adverse to the Georgia Militia Claims; and the question being on recommitting it to that committee with the following instructions:

"To report a bill making an appropriation for the payment of the Georgia Militia Claims for the services rendered in the years 1792, 1793, and 1794; the appropriation to be conformed to the report of the Secretary of War, made to this House upon the subject of these claims in the year 1808, and to embrace each class of claims respectively, as described by that report."

Mr. TATNALL, of Georgia, observed, that, although the grounds of the claim, now under consideration, had been already fully presented to the view of the House by one of his colleagues, during the present session, yet, as some weeks had since elapsed, it was perhaps necessary again to recapitulate them. He should, therefore, in as brief a manner as possible, proceed to do so.

From the documents which have been furnished, it appears that the facts connected with this case are, that, in the years 1792, '3, and '4, the militia of Georgia were called out for the defence of the frontier against the hostilities of the Indians; that these militia were called out, in some instances, under the exercise of dis-

cretionary power by the Executive of that State; that the Federal Executive, at some moments, gave his express sanction to the exercise of such power; but, at other moments, seemed inclined to limit the extent of the force to be employed in defence; that, hence, some doubts arose as to the liability of the General Government to pay for all services to the extent to which they were rendered; that, subsequently, when the original liability of the General Government seemed to be conceded, it was contended that a stipulation contained in the "Articles of agreement and cession," entered into between the United States and Georgia, in 1802, was intended to embrace this claim, and that, therefore, the General Government is at this time fully discharged from its previous obligation. This, sir, will be deemed to be a fair and frank statement of the facts of the case.

To determine the question of liability on the part of the General Government, we are naturally led to inquire, *first*, whether the Governor of Georgia, was, under the circumstances, acting under the express, or necessarily implied sanction of the General Government; for, if so, the liability, originally, of the General Government to pay for the services rendered, will be conceded. But, if this is found not to have been the case, we are, *secondly*, to inquire whether the circumstances were, of themselves, such as to authorize the Governor, under the Constitution of the United States, to act as his discretion might point out. If both, or either of these positions be settled in the affirmative, it only then will remain to inquire whether the clause in the instrument just alluded to, was intended to embrace this particular case, and thereby to free the General Government from a liability, previously existing, to pay for the militia services rendered by Georgia.

*First*, then, did the General Government afford its sanction in a manner which would authorize the calling out of the militia by the Governor of Georgia? Now, this is to be determined only by a reference to the documents before us, but I have no hesitation in saying that such sanction was given.

In the letter from the Secretary of War, dated October 27, 1792, the hostile disposition of the savages is spoken of, and in it is this passage: "If the information which you may receive, shall substantiate clearly any hostile designs of the Creeks against the frontiers of Georgia, you will be pleased to take the most effectual measures for the defence thereof, as may be in your power, and which the occasion may require." In the letter from the same individual, dated 30th May, 1793, the Governor is restricted (from considerations of foreign policy) to defensive operations, but is authorized to increase the force. The following is an extract from it:—"From considerations of policy, at this critical period, relative to foreign powers, and the pending treaty with the Northern Indians, it is deemed advisable to avoid, for the present, effective expeditions into the Creek country. But, from

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the circumstances of the late depredations on the frontier of Georgia, it is thought expedient to increase the force in that quarter for defensive purposes." In the letter of the 10th June, 1793, from the same individual, there is this remarkable passage:—"The State of Georgia being invaded, or in imminent danger thereof, the measures taken by your Excellency may be considered as indispensable. You are the judge of the degree of danger and of its duration, and will undoubtedly proportion the defence to the exigencies. The President, however, expresses his confidence, that, as soon as the danger which has induced you to call out so large a body of troops shall have subsided, you will reduce the troops to the existing state of things, provided the safety of the frontier will admit the measure." And so threatening did the Secretary of War seem to regard the danger, that he even supposed the militia of Georgia might not be competent to the defence of the State, and therefore authorized the Governor to apply to the Executive of South Carolina for aid. He, at the same time, addresses a communication to the Governor of South Carolina, of which the following is an extract: "The President of the United States has received authentic information from Georgia, of the unprovoked and cruel outrages of parties of Creeks upon the frontiers of that State; and, as it is at present uncertain to what degree the evils complained of may be extended, the President has directed me to request your Excellency, that, in case the frontiers of Georgia should be seriously invaded by large bodies of hostile Indians, you would, upon the request of the Governor of said State, direct such parties of the militia of South Carolina to march to the assistance of Georgia as the case may require, *for the expenses of which the United States will be responsible.*"

Surely, sir, this ought to convince every one that the General Government considered the situation of Georgia as seriously alarming, and that it was inclined to repose every degree of confidence in the discretion of the Governor of that State. The Governor of South Carolina is requested to comply with his requisition—and here, sir, I would put it to the candor of my honorable friend from South Carolina, the Chairman of the Military Committee, to say if such requisition had been made, and if the Governor of South Carolina had complied with it, could he have felt himself authorized to refuse to pay the troops for their services? This is, perhaps, sir, very much of an *argumentum ad hominem*, but my friend must excuse me here for it. The case is a simple one; the Federal Government authorize the troops to be called out if necessary—prescribe that necessity to be judged of by the Governor of Georgia—the Governor of Georgia makes the requisition upon the Governor of South Carolina, and the requisition is obeyed. Could he, could any one here, refuse to pay for the services of these troops? and, if not, in the name of conscience, how can we refuse to pay for the services of the troops of

Georgia? Does the mere fact of their being Georgians make so material a difference? If the Governor of Georgia could call out, at his own discretion, and without being dependent at all upon the discretion of the General Government at a distance, the troops of another State, surely, *a fortiori*, he must have had a similar and co-efficient power over those of his own State.

In a letter, dated 18th February, 1794, from Governor Matthews to the Secretary of War, he protests against the orders restricting him to operations of a character strictly defensive. He urges most strongly the necessity of his being permitted to pursue the savages into their own country—to follow them, like wild beasts, to their dens, as the only possible means of completely effecting the security of the frontier. He also proposes a plan of defence, by erecting block-houses along the whole extended frontier line. Now, sir, this complaint proves that Governor Matthews considered himself as acting under the orders of the General Government, and the adoption of a part of his proposed plan of defence, (as appears in the Secretary of War's letters to him of the 25th March, and 14th May, 1794,) shows that the Executive of the United States continued to lend his sanction to the services of the militia. These documents, without going further, clearly show that the Governor of Georgia was vested with discretionary power, adapted to the exigency. This power he exercised; and that it was correctly exercised, may be inferred from the readiness with which the agent furnished rations. These were paid for by the General Government, and that, too, without any expression of censure upon him, for affording them. Is not this a conclusive fact, that the militia were properly called out and held in service? They were supplied with arms by the Federal Government—they were regularly mustered into service, and were furnished (as I have said) with rations. These facts appear palpably in the documents before us, and it is unnecessary for me to weary the attention of the House by reading them in detail.

It appears, then, that the General Government did authorize the Governor of Georgia to order out troops at his discretion; and, although in one instance, the General Government seemed inclined to withhold its sanction in future, yet, upon the remonstrance of the Governor, he is again assured that he is considered the competent judge of the extent of the danger. Subsequently, indeed, i. e. in 1794, the number of troops is limited by an order from the General Government, and the disbandment of those whose services were not deemed requisite, was (as Captain Freeman, the agent of the War Department, acknowledges) effected as soon as possible. The situation of the frontier had, however, unquestionably then become changed. All active hostility on the part of the Indians had ceased, and even a disposition to hostility was scarcely manifested. The peace, too, which soon after took place between France and Spain,

and which must have been anticipated by our Government, removed one great exciting cause of Indian hostility. But, it is worthy of observations, that as late as 1795, one twelvemonth after the militia (the pay for whose services is now claimed) are disbanded, the Governor of Georgia is notified by the Secretary of War, that 200 regulars are about to be sent to the St. Mary's River, for the purpose of keeping the Creeks in order. So large a force being deemed necessary at one single point, at a time of comparative peace, would seem to prove that, if the Governor of Georgia had erred at all, it was in not having ordered out a much larger force. Sir, this was the opinion expressed in Georgia, as appears by Col. Freeman's correspondence.

But, even taking it for granted, that no express or necessarily implied sanction of the General Government, was afforded, still the second point which I have made will fix a liability to pay for these services, upon the General Government: for, secondly, the circumstances were, of themselves, such as to fully authorize the Governor (under the Constitution of the United States) to act as his own discretion might point out. And here, sir, I would remark that this clause in our constitution, which recognizes the exercise, by a State authority, of a discretionary power, in times of imminent danger, is merely affirmative, or declaratory of a right which the God of Nature has given to every man, and which necessarily belongs to every community—which no law can take away, and which might have been exercised in the particular case before us, under the supposed state of things, even if the General Government had expressly forbid its exercise. I would also add, that, *ex natura rerum*, the individual threatened with imminent danger, must be the judge of the force which it is necessary for him to use, and the manner in which it is to be applied to secure safety to himself. Those who are present are alone able to determine the nature and extent of the danger. An individual at a distance, or a government at a distance, cannot be a competent judge. This in fact is frankly and readily conceded by the General Government; for the Federal Executive, in a letter addressed to the Governor of Georgia says:—"You are the judge of the degree of danger, and of its duration, and will undoubtedly proportion the defence to the exigencies." And, in another letter addressed to the Governor of South Carolina, that officer is expressly referred to the Governor of Georgia, as the proper person to determine when any auxiliary force should be ordered out from South Carolina. The reason is clear: he is on the spot, and is, therefore, alone competent to determine so important a matter.

Of the existence of imminent danger on the frontiers of Georgia, we can easily convince ourselves, by casting only a hasty glance upon the communications of Governors Telfair and Matthews, and, also, of Col. Freeman, the agent of

the War Department, and of other individuals, also, in that quarter, many of them United States military officers. I will briefly refer to parts of these. And here, sir, I will remark, that the situation of Georgia can easily be conceived. With a frontier of near 400 miles, lined with numerous savages of the most warlike and furious character, and with a sparse population, her defenceless and exposed situation can easily be imagined.

The letter from the Governor of Georgia to the Secretary of War, dated 22d of May, 1792, gives intimation of the hostilities of the Creeks and Cherokees, and urges "exertions towards a general defence." To show, however, that these apprehensions were also entertained by the United States military officers, I will cite the letter of Maj. McCall, dated 15th of June, 1792, in which he not only acknowledges the danger, but also says, he has found it necessary to call out a portion of the militia in his vicinity. A letter, also, from Andrew Pickens, dated 12th September, 1792, states, that a general war was expected; and a letter from Captain R. B. Roberts, also of the army, expresses great anxiety, and the necessity of the militia being called out "immediately and in force." Maj. Gaither, commanding the United States troops in Georgia, informs the Governor that he, also, has found it necessary to call out the militia to his aid. With such sanction as this—with the countenance of every United States officer in the State, the Governor would have been wanting in diligence and in fidelity, could he have hesitated a moment. Our frontier was streaming with the blood of women and children—our outer settlements were abandoned in dismay by the inhabitants, and the Governor could not hesitate how to act.

The force to be employed, in defence, was not merely to be measured by the numbers of the enemy, (and these were not few, for they were composed of the two powerful tribes, the Creeks and Cherokees,) but, also, by the difficulty of guarding an extensive and naked frontier. The whole force called out, never, at any one period, amounted to more than from ten to twelve hundred men, and it is absurd to suppose that this could have been disproportioned to the magnitude and pressure of the danger. When it is recollected, what forces were deemed necessary to subdue a part only of these very tribes, within a very few years past—when it is recollected that large armies from Tennessee, North Carolina, South Carolina, and Georgia, aided by several regiments of regular infantry, were required, at this late period, to bring but a portion of these tribes, impaired as has been their population, into submission, it may well be conceived what difficulties and what dangers the young and thinly populated State of Georgia had to contend with. With but a handful of United States troops to aid them, the militia of Georgia, at that early day, were required, by the General Government, to defend her whole frontier. The imminence of

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the danger is apparent from the many letters upon your files—the extent of it no man can doubt, who has read the history of our late war in that quarter. There are other communications on this subject, among the documents, but which I think it unnecessary to allude to. The General Government, indeed, seems to have had but little doubt upon the subject, for it never hesitated to furnish arms, ammunition, and supplies, of every description. In regard to the pay alone was there any hesitation. This hesitation was, evidently, partly produced by the want of regular muster-rolls, and of the Governor's certificate of service—both of which were subsequently furnished; and, in fact, this House would not now have been troubled with the consideration of this subject, had not the mind of the War Department (according to the account of its own agent) been employed at that moment so much by more weighty matters as to prevent any attention to this. I will read an extract from Colonel Freeman's report, which has an important bearing upon this question. He, it will be remembered, was present in Georgia, was acting there as the agent of the War Department, and must have been privy to every fact or occurrence of consequence. [Here Mr. T. read an extract from Colonel Freeman's report to the Secretary of War, stating, in substance, that the Governor was required to give a certificate before the troops could be paid; that they were, in conformity with the orders of the Government, employed merely in defensive operations; that the War Department was about admitting and paying these claims, &c.]

In regard to these claims, Mr. Pickering, then Secretary of War, writes, August, 1796, to the agent of the War Department, in Georgia, as follows: "The large estimate for services, about which my predecessor doubted, I have *looked into*, and will immediately further examine. From the complexion of these claims, connected with the Governor's certificate, which I received enclosed in your letter of the 23d of June, I am inclined to think they *must be generally admitted*." Here, then, this officer, after having examined the nature of these claims, and their extent, says, "they must be generally admitted," to use his own words. And again, in a subsequent communication to the same officer, he goes further, and says, "Money for paying the Georgia militia is preparing to be forwarded. No delay will take place that is avoidable," &c.

Mr. Pickering's standing is well known, and his opinion, thus expressed, will, I am confident, have weight. I think, sir, from the hasty view which I have presented, my second position may be deemed fairly established, viz: that the circumstances were such as fully, of themselves, to authorize the Governor to order out the militia, even without the express sanction of the President. The immense extent of the frontier, the sparse state of the population, the number and ferocity of the savages, the horrid murders of the inhabitants, the frequent depre-

dations upon our settlements, are matters spread perfectly before our view in the documents upon our tables. That man must be a skeptic indeed, who can doubt of the necessity for the steps taken by the Governor for defence!

To sum up my views upon this subject in a few words. I would observe, in conclusion, that the General Government gave its sanction, the documents fully prove; that the Governor could have acted without this sanction, is evident from the situation of the Georgia frontier; that the force ordered out by him was not disproportioned to the magnitude of the danger, is apparent, when we look at the extent of the frontier to be defended, and when we have the General Government's own estimate of the danger, which supposed it not unlikely that the militia of Georgia might be inadequate to the defence, and that it might become necessary to look to South Carolina for aid; and when it is recollected that the whole force (never exceeding from 1,000 to 1,200 men) employed at any time, must have been far, very far indeed below the disposable force of Georgia alone, and that it was certainly a mere petty detachment, when compared with the immense regular and militia forces employed in the Creek nation alone during the late war. That the "Articles of Agreement and Cession" had nothing to do with their claims for services, is manifest from the phraseology of the instrument, even independently of the positive assertions to that effect, of the Georgia commissioners, and that, consequently, the General Government has no plea for refusing to discharge them. Sir, I repose with confidence, in the justice of this House, and I trust that the time has at length come, when the State of Georgia is no longer to be found knocking at your doors for the humble pittance due to her citizens for services rendered to the General Government.

Mr. FOSYTH wished distinctly to understand the ground on which the claim had been resisted by the Committee on Military Affairs.

Mr. HAMILTON (chairman of that committee) in reply, called for the reading of the report of the Military Committee in 1802, of the Committee of Claims, and also of the Military Committee of the last session.

[These reports were read accordingly.]

Mr. H. then, in a few words, stated the views of the committee in rejecting the claims.

Mr. MALLARY, of Vermont, observed, that this subject had been before Congress in different forms, since he became a member. From the anxiety with which it was urged, on the part of its friends, and the constant indecision of the House, he was induced to give it a particular examination, so as to be prepared to act decisively upon it. He would endeavor to be as concise as possible in the views he should present to the House.

It is alleged by the claimants, that they were called into the military service of the United States during the years 1792, 1793, and 1794, to defend the western frontiers of Georgia,



against invasion by the Indian tribes. It is admitted on all sides, that the service was performed in the most energetic and patriotic manner. That there now remains due about one hundred and forty thousand dollars. More than thirty years have elapsed since the Georgia soldiers were entitled to remuneration. Their rights have been evaded so long, that they have almost lost the power of exciting any interest in their favor. But it is not too late to perform an act of justice to those who may survive, or the descendants of the defenders of the State.

It seems to be clear, said Mr. M., that the General Government authorized the call for the militia and the continuance of their services; that the State of Georgia is under no obligation to remunerate them, and it would be unjust to require it; that the claims were never embraced in the articles of cession, nor were they intended to be by the contracting parties; that, had the attempt been made to compel the militia to depend for their pay on Georgia, without their approbation, it would have been a direct violation of their rights and of the constitution; that it is due to the honor and good faith of the nation that the General Government should make a prompt provision for the payment of the claims.

Mr. FOSYTH then said, it is now too late to deny a liability to pay what was demanded in 1798. But a new ground of opposition to these claims was discovered in 1808. A committee of this House fancied that these claims were adjusted in the contract between the United States and Georgia for the cession of the territory comprising at this day the States of Mississippi and Alabama. The United States stipulate, as part consideration of that cession, to pay \$1,250,000 out of the net proceeds of the land ceded, "in consideration of expenses incurred by the said State in relation to the said territory." These magical words, in the judgment of the committee of 1808, as in that of the military committee of this Congress, paid off these militia claims, or at least shifted the responsibility upon the State of Georgia. In support of this opinion, as the words themselves bear no such construction, resort was had to Mr. Levi Lincoln, the Attorney-General, who was one of the commissioners who formed the contract of 1802. This letter of Mr. Lincoln is a mere opinion, founded not upon the instrument, but upon his vague recollections of some conversations with the Georgia commissioners. As a matter of evidence, it weighs not a feather, as it is expressly contradicted by the positive declarations of two gentlemen, in every respect his equals. They speak from perfect knowledge of this subject. These gentlemen state that these claims were not included, because the State of Georgia never acknowledged herself liable for them. That the commissioners had no authority to stipulate about them, and did not stipulate for their payment or assumption by Georgia. It is not possible for any un-

prejudiced man to read the letter of the Georgia commissioners, and believe that these militia claims were intended to be included in the words quoted from the act of cession. It is admitted, however, that, in drawing up articles of any compact, between States or individuals, the intention and the act are not always the same. The parties intend to do one thing, and sometimes do a very different thing. This may arise from the superior adroitness of one of them in the use of language, or from carelessness in the choice of words. In the present instance, neither can be supposed; all the persons engaged in forming the compact of 1802, were gentlemen of astute understandings and pure characters. There was no design to entrap—there was no want of care. The words used expressed fairly the intention of the parties. Can they, by any construction, be made to cover these militia claims? Georgia did not owe them. This was admitted. The documents show that she did not. Where does she assume to pay them? No promise to pay them is in the instrument. Nothing is contained in the compact which imposes any obligation upon Georgia which did not then exist. These claims were then charges on the General Government. They remain so still.

Were it even admitted that there was an obligation on the State of Georgia to pay these claims in 1794, it is yet necessary to show that these expenses had a "relation to the territory ceded," before they can be considered included in the cession of 1802. In what does this relation consist? The services were for the defence of the frontiers, and had no more relation to this territory than services performed in New Hampshire or Massachusetts, in defence of their frontiers.

It is a great error to suppose that the magical words "in consideration of expenses incurred by the State," and on which so much stress is laid, express the real consideration for which the \$1,250,000 was to be paid. The consideration was a territory sufficiently extensive for two European kingdoms. From the sale of the lands, Government has received four millions of dollars; more than six millions is due, and the remaining lands will yield fifty millions, if sold at the minimum price of public lands. It may be asked, Why were these words introduced into the compact? and what are the expenses to which they refer? The last question has been answered by my colleagues. The first I shall now answer, and I trust, satisfactorily. When the commissioners of the United States were called upon by those of Georgia, to stipulate a payment of a large sum, out of the proceeds of the lands ceded, if they did their duty, they demanded of the Georgia commissioners, on what principle Georgia demanded a payment for lands ceded, for the general benefit, when New York, and Massachusetts, and Connecticut, and Virginia, and North Carolina, had ceded territory without any equivalent? To this appeal to the

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magnanimity of one of the parties, the answer was simple and conclusive. New York and Massachusetts had conflicting claims, and, to avoid dispute, ceded the disputed territory. Connecticut gave up her jurisdiction, but retained her right to the soil. Virginia and North Carolina gave up their territory, but saddled it with the payment of a variety of the existing claims, indefinite in extent, and not yet satisfied. Georgia ceding territory, asks only what has been demanded and granted to Virginia and North Carolina. She asks in money, and they received lands. Georgia owes to her State troops two millions of acres of land. This debt is to be discharged out of the Western lands, about which we are treating, by the terms on which the troops enlisted. It is not a Revolutionary claim, but a claim arising prior to the adoption of the constitution. It is due for defence of the State, and forms a fair and reasonable claim upon the confederation. It has not been allowed, and we must take care that it shall be paid, especially as we are about to convey away the fund on which it was secured. The nature of this claim has been already explained. A brief recapitulation may not, however, be useless. In 1787, during an Indian war, it was deemed necessary to raise 3,000 men. As an inducement to enlistments, 640 acres of land were offered to each private; and to the officers, a larger quantity—the greatest amount promised being 1,200 acres to a colonel. The statute of Georgia lies on my table, for the inspection of any gentleman who wishes to know, accurately, its provisions. It is enough for my purpose to state the substance of it. The enlistments were made, and warrants for the bounties were given to the officers and men. According to the promises of the statute, these bounty warrants were to be located in the Western territory. A part of the troops were to be raised in what was then called Franklin, a part of what is now the State of Tennessee. To these recruits a promise was given of 50 acres on every 100 of bounty, in lieu of rations, which Georgia did not propose to furnish them, and this quantity was to be surveyed in the Bend of Tennessee. In demanding payment for these bounty warrants, Georgia followed the example of Virginia and North Carolina. In consenting to pay, the United States did only what was done for those States. The difference between the cases is this: the claims of Virginia and North Carolina were revolutionary. The claims of Georgia prior to the constitution, but after the revolution.

Virginia and North Carolina made the land subject to their claims. Georgia asked the amount in money, and paid it over to her citizens and those claiming under them. The commissioners of Georgia and of the United States acted wisely in making this arrangement, both for the interests of the individuals claiming and for the convenience of the United States in the consequent survey and sale of the

territory ceded. The ceded territory has been regularly surveyed by the United States. There are no conflicting claims in Alabama and Mississippi. The ground has not been "shingled with warrants" as in Kentucky and Tennessee. The claimants, under the statute of Georgia, have all been paid, while some of those claiming under Virginia and North Carolina are yet unsatisfied. Whoever will consider the disputes and difficulties which have attended the arrangement of these claims of Virginia and North Carolina, will applaud the conduct of Georgia.

This explanation accounts for the apparent contradiction between Mr. Lincoln and the Georgia commissioners, and completely reconciles their statements. Mr. Lincoln heard the commissioners say something about militia claims due by that State, and he has confounded the claims for services in 1787, with the claims for the services rendered in 1792, '3, and '4. This claim of two millions of acres is that referred to in the cession, and not the trifling sum of \$142,000. This latter is a debt incurred, not by Georgia, but by the United States; and is as wholly unconnected with the former as the militia claims of Massachusetts are. In construing this instrument, then, it is for this House to choose whether they will make its language refer to claims equal in amount to the sum stipulated, and having a direct relation to the land ceded, or to this little militia claim, so far short of the sum stipulated, having no relation to the land ceded, and in which the State never meddled, except through its Governor. I will now show, in conclusion, that the military committee have erred on this subject, and on the same ground as the Secretary erred in 1794. They express great regret that the documents were burnt in the War Office. Sir, it is true that the documents were burnt, but the records of the State of Georgia have been applied to, and from those records the whole correspondence on both sides has been obtained. The committee suppose that those documents, if they had not been burnt, would show why these claims have been rejected. And they suppose, as the Secretary did, that they were rejected because the operations against the Creeks and Cherokees had taken a direction which was offensive to the Government. But this was never the fact. It is true, indeed, that expeditions were undertaken against the Indians, in opposition to the will of the Government; but these were expeditions, not of the militia, but of volunteers, acting on their own mere motion, in revenge for injuries previously inflicted by the Indians.

It is immaterial whether the Governor of Georgia acted right or acted wrong. He was authorized, by the General Government, to raise those troops: in doing so, he was the agent of the General Government, and the Government is bound to pay the soldiers he raised.

Were it, however, necessary, I could show

that, instead of doing too much, he did too little. The documents show that the people of the State did not consider the frontiers sufficiently protected. The legislature passed sundry resolutions, calling upon the General Government for further aid—aid which would have been indispensable, but for the voluntary expeditions undertaken by the citizens of Georgia against the Indians. To show the danger to which the State was exposed, I ask the attention of the House to a single document, a letter from the Spanish Governor of Louisiana to the Spanish commissioners, Jaudenes and Viar, [Mr. F. read from Waite's State Papers extracts from the letter, which stated that 600 Cherokees were asking supplies of ammunition to invade Georgia; that partial supplies had been given; that four bodies of Creeks were ready to invade Georgia, but were restrained by the Governor until it was ascertained what was to be done by Spain and the United States.] Such was the effect produced by this letter, that the administration of Gen. Washington expected a war with Spain as the ally of the Creeks and Cherokees. The letter of Mr. Jefferson to Mr. Carmichael, communicating this document, shows the apprehension of the Government that such was to be the consequence of the disturbances to the South. To the Western gentlemen, a full justification of the conduct of the Governor would be found in the fact that, notwithstanding the force called into service, the incursions of the Indians were so frequent, that the frontier settlements were broken up the whole extent of the Indian boundary. All this is aside from the question. It was immaterial whether the Governor was justified or criminal in employing the force called out. The troops were called out by him as the agent of the United States; the United States are bound to pay. The United States have paid the contractor who supplied them all the expenses incident to the service; have paid troops from Tennessee, employed under similar circumstances, and have not been absolved from their liability to the Georgia militia by the compact of 1802.

Mr. HAMILTON rose in reply, but gave way to a motion for adjournment, which was carried.

TUESDAY, February 15.

#### *Georgia Militia Claims.*

The House then passed to the unfinished business of yesterday, which was the motion of Mr. TATNALL, to recommit the report of the Military Committee on the Georgia Militia Claims, with instructions to report a bill for the payment of them.

Mr. HAMILTON said that he would not detain the House long in the very few remarks which he had to make in vindication of the report of the Committee on Military Affairs, in reply to the objections which the gentleman from Georgia had urged in opposition to that report.

He said that, whilst he admitted that no claim

before Congress ought unhesitatingly to be discarded by the circumstance of its having been, time after time, rejected by the committees to which it may have been referred; nevertheless, the fact of reiterated rejection was calculated to produce a well-founded distrust of the justice of a claim so circumstanced, and must produce a disposition, on the part of the House, not to reverse previous decisions, except on the discovery of some new matters of fact, which may have escaped a previous investigation.

As it respects the claims under consideration, they have been before Congress, in various shapes, from 1797 to the present period, and have been uniformly rejected by the committees of this House, with the exception of a favorable report of a select committee, to whose consideration they were once confided. In 1808, the Committee on Claims made an able report, which may be said to have formed the basis on which the Georgia Militia Claims have ever since been rejected, on the ground that their complete payment was consummated under the treaty of cession between the United States and Georgia, executed the 24th of April, 1802. Before, Mr. H. said, he came to consider the stipulation of this treaty, which it is supposed had relation to these claims, he would remark, which it was important for the House distinctly to understand, that the validity or justice of the claims independently of this stipulation, had never been fully admitted by the Government of the United States, that the largest portion of them were reported, by the agent of the War Department, as unauthorized; and, with such a designation, they yet stand on the records of the House, and on the files of the War Office. In a word, of the claims which, by the motion of the gentleman from Georgia, the Committee on Military Affairs are instructed to report a bill to provide payment, only \$18,159 60 are called *authorized*, out of \$142,585 29. The remaining sum of \$129,875 66, being for services, which, in the language of the special agent, employed by the War Department, Colonel Constant Freeman, "were not considered, either by the Executive or himself, as fully authorized."

This discrimination resulted from the following circumstances: In 1792, the frontiers of Georgia were seriously menaced by Indian incursions. The then Secretary of War, Gen. Knox, authorized the Governor of that State, "to take such measures, for the defence of the same, as might be indispensable," and, very shortly after, communicated to the Governor the views of the President, as to the amount of the militia force which might be necessary for the security of the frontiers of Georgia, in addition to the regular troops which were, at that time, in that quarter, under the command of Major Gaither. The additional force, thus suggested as sufficient, were one hundred horse and one hundred foot. The "case of the serious invasion of Georgia by large bodies of Indians," the Secretary remarked, at the conclusion of his

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order, "must be left to the provisions of the Constitution of the United States." The authorized claims, amounting to \$18,159 68, may, therefore, be considered as founded on the services of the one hundred horse and one hundred foot, ordered by the Secretary; and the unauthorized claims, amounting to \$123,375 66, are those which grew out of the discretion which the Executive of Georgia exercised under the presumed instructions of the Secretary of War, or the provisions of the constitution.

As the ground assumed by the committee, in their report, is the one so often taken, that these claims have been finally settled under the treaty of cession, Mr. H. said he would not go into a minute recapitulation of the correspondence, to show that the unauthorized claims were always considered as liable to objection, in consequence of a belief, on the part of the General Government, that the Governor of Georgia had not exercised a proper discretion in calling out troops, the levies of which were, at times, unjustifiably large and frequent, and, consequently, entailing unnecessary expense on the United States. If any proof were wanting of this fact, it is to be found in the letter of the 22d February, 1794, in which the Secretary of War informs the Governor of Georgia "that a body of militia had been kept up, on the frontiers of Georgia, during a greater part of the last year, greatly exceeding the number, which, according to the information received at the War Office, would seem to have been required by the state of things in that quarter." This number was represented from 1,000 to 1,200; and, in this communication, the secretary employs the caution of reverting again to the force which the President considered adequate to the defence of Georgia, which he was willing to consider as raised and continued in the service by his authority, viz: 100 horse and 100 foot.

But this was not the only exception which was probably taken to the claims. The correspondence between the Federal and State authorities, as well as the report of Col. Freeman, discloses the fact that, notwithstanding the peremptory instructions of the Government of the United States, that the Indian territory was not to be invaded, that incursions did take place, which induced the Secretary of War, in his letter to Col. Freeman, of the 5th of September, 1798, to order him "not to concur in any measures, at the expense of the United States, for invading the Creeks." And, in relation to the facts in connection with this branch of the subject, Col. Freeman says, in his report on the unauthorized claims made to the War Department, on the 25th of October, 1802, "the periods in which these unauthorized claims are made, are particularly marked in the history of that State, for misunderstandings between the Creeks and the frontier settlers. There were faults on both sides. The Indians were continually stealing horses, murdering, and doing other injuries to the inhabitants, who, in retaliation, made incursions into their

country. Such were the Oakmulgee expedition under General Twiggs, in June, 1798, which consisted of about 750 horse and foot; the destruction of the Oakfuskee village, by Col. Melter, in September, who had under his command about eighty-eight officers and men; the detachment of 125 men, who marched under the orders of Major Brenton, against the Little Chehaw village, on Flint River; and several others of less note, which were made by volunteer parties of militia. It has been supposed that these expeditions have operated as objections to admitting the militia claims. Although they might have been irregular, it is certain that some of the detachments who were then in service, afforded great security to the peaceable inhabitants on the frontiers."

If a portion of these unauthorized claims comprised expeditions involved in these excursions into the enemy's territory, contrary to the express orders of the President, it may well be supposed, said Mr. H., that very serious difficulty would have been made by the Government as to their admission. But these circumstances form not the only objections which were entertained as to the validity of the claims in question. Both from Col. Freeman's report, and the correspondence between the Governor and Col. Gaither, who commanded the Federal troops, it appears that the militia were sometimes embodied without that attention to the forms of service which were required, which led to some unpleasant conflicts of authority between Col. Gaither and the State functionaries. It is evident, from the letters of this officer, that he did not conceive that any serious invasion of the Indians was threatened, but merely predatory incursions, and, in November, 1792, he thinks even a less force than that designated by the Secretary of War, would be sufficient for the protection of the frontiers; that is, two troops of cavalry, instead of 100 horse and 100 foot. That the militia of Georgia were assembled with irregularity, is highly probable, from another fact which appears in the correspondence between Col. Freeman and Major Gaither, in their respective letters of the 17th and 19th October, 1798. The former makes an application to the latter, "to appoint some fit and proper person to muster and inspect the militia," to which Major Gaither replies: "Yours of the 17th inst. I have received, and declare to you, if there are any militia in arms under the authority of the United States, in Georgia, I am ignorant thereof. When I received your instructions from the Secretary of War, I wrote immediately for information, which I daily expect to receive, and for that reason wish to postpone the mustering the militia of Georgia, until I am properly informed. As there are difficulties which may arise in this business, it is highly necessary it should be delayed."

Mr. H. said that he had thus, as compendiously as possible, endeavored to show, that these unauthorized claims had probably been sus-

pended for other reasons than any disposition on the part of the General Government to do Georgia injustice. He then remarked, that it was much to be lamented the conflagration of the War Office had probably destroyed many documents illustrating the views and objections of the Government on this subject, from the earliest period at which their payment had been pressed. But, as he had before remarked, if the House came to the same conclusion with the committee, that these claims, "authorized," as well as "unauthorized," were provided for and paid under the treaty of cession of 1802, it was not very material to inquire whether the inferences which he had deduced were sound or not.

Mr. FORSYTH, of Georgia, in reply to Mr. HAMILTON, said, the gentleman who had just taken his seat had committed several mistakes as to the facts of the case before the House, which it would be best to correct while the remembrance of his argument was fresh in the minds of the members. He stated that there had been no favorable decision from a standing committee; that all the favorable reports were from select committees. A bill was reported at the last Congress by a standing committee of the Senate. The bill passed the Senate, but was not acted upon finally here. [Mr. HAMILTON explained, that his remark was confined to committees of the House of Representatives.] Mr. F. was not prepared to dispute the fact, that unfavorable reports had been made by standing committees, and favorable by select committees. He did not perceive that this ought to prejudice the claimants. Reports were not considered as authority: their value depended upon the matter contained in them, and they were confirmed or rejected according to the judgment of the House, after careful examination of their contents. The two reports against the claim, were, 1st, that of the Committee of Claims of 1803; 2d, that of the Military Committee of the last session. Both committees occupy the same ground, that the claims were due by Georgia in 1794, and that the responsibility of the United States was removed by the compact of 1802. Both committees, in my judgment, erred, from the want of due consideration of the documents. The gentleman from South Carolina has satisfied me by his argument of to-day, that the Military Committee have in this case relied too much upon the previous reports, and have therefore failed to examine accurately the original papers. He says, with regret, that two letters of the Governor of Georgia are not to be had. This is a mistake. Both those letters are in a pamphlet now in my hand, printed at the present session of Congress. He states, also, that this business originated in an application from the Governor of Georgia for aid from the General Government in 1792. This was not so. The origin of this claim is a letter from the Secretary of War to the Governor, warning him of impending danger, and urging him to take preparatory measures. The letter to which the gentleman alludes,

is the answer to the Secretary of War. The measures preparatory to meet the danger, were taken, and notice given to the War Department. A discretionary power was then given. Troops were called out; a dispute arose about the number called out; an explanation was given, and the General Government was satisfied. The concluding part of the letter of the Secretary of War expresses a hope that the large force will be dismissed when the danger is passed, *provided* the safety of the frontier will admit of it. The Governor at this time received also authority to call out the militia of South Carolina, if necessary, through the Governor of that State, who was officially informed, from the Department of War, that the expense incurred would be paid by the General Government. The Military Committee, with the Committee of Claims of 1803, both consider the Governor of Georgia as defending the State, under the constitution and laws of the United States, in his character of Governor. He acted as the special agent of the War Department under a written authority. He addressed himself as such to the Department. He gave notice as such of his movements. The United States knew the number of troops; never objected to the number until there was an apprehension that they were to be used for invading the Indian territory. This the Department wished to prevent, lest we should be involved in a war with Spain.

The Governor had contemplated an invasion, and was making preparations for it. It was prevented by orders from the War Department. But, sir, if the Governor had invaded the Indian territory, and desolated the whole region to the banks of the Mississippi, this act could not have impaired the right of the militia to their daily pay. I pray the recollection of the House of the letter of the Governor of Georgia, written on the application of the War Department, in 1794, after the Indian war had ended. This letter has also escaped the notice of the Military Committee. The Governor says the militia were used only defensively, or in pursuit of invading Indians; that their services were indispensable to the safety of the frontier.

All difficulty is solved by the compact of 1802. This cuts the Gordian knot for all the committees, and releases the United States from all liability. What are the arguments in support of this opinion, now offered by the gentleman, or heretofore used by others?

The gentleman applies to this contract for a sale of territory between Georgia and the United States, the rule of international law, that when nations have a treaty for the settlement of pecuniary claims, all those existing previously to the contract, are taken to be embraced by it. Without inquiry into the correctness of the rule, which might be disputed with safety, I have to say that this compact was not for the settlement of pecuniary claims. The United States wanted to have a cession of territory, and Georgia was willing to make it. All that the State desired was, that the territory itself should pay all the

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debts due by Georgia, and for which that territory had been pledged by that State.

But, the gentleman insists that these militia services were the consideration for which the one million and a quarter was paid. Sir, this is a mockery of Georgia. You pay her a sum of money out of the proceeds of the property she gave you, and then gravely say this settles all disputes. You must pay all our obligations to your militia. I have already endeavored to show that the words in the compact were introduced to show the motive which justified Georgia in demanding any payment for the lands ceded for the general benefit. The State troop bounties, the gentleman says, cannot be referred to, because the United States were not answerable for those debts. But, was not Georgia answerable; had she not bound herself to pay them out of this fund. If this were the case, could the Commissioners of the United States refuse to provide the means of paying them out of the fund?

The United States were, however, answerable on every principle of equity. Georgia was a member of the confederation. That confederation was bound to pay for the common defence, and these expenses were incurred for the common defence. But, sir, the gentleman urges not upon the compact, but on Mr. LINCOLN's vague recollections of the conversations of the commissioners who framed that compact. Look to the instrument, and there is no difficulty. The example of Virginia and North Carolina was followed, to the benefit of the Georgia claimants, and to that of the States formed out of the ceded territory. I will not repeat what has been already urged on this point.

In conclusion, Mr. Speaker, I would remark, that this claim is presented on the ground that the Governor of Georgia was acting, not as the Executive of the State, but as the agent of the United States. Considering him as fulfilling his duties under the constitution, according to the rules established during the late war, the United States are bound to pay the amount. By the rule established, as we are told by the Military Committee, militia in service, in case of invasion, or imminent danger thereof, during the late war, whether called out by the Governor of a State or not; whether called out by an officer of the General Government or not; were paid as a matter of course out of the public Treasury by the Department of War.

What is to deprive the militia of Georgia of the benefit of this rule? Is there any difference between a British and an Indian war, in the rules for the settlement of accounts? Is the spontaneous gathering of the militia in time of danger in 1818 and '14, to charge the public Treasury directly, when the call of a Governor, acting under an authority vested by the General Government, is deemed insufficient, in 1792, '3, and '4, to fix any thing but a remote responsibility upon that General Government? But, Mr. Speaker, I have done; it remains for the House to decide the proposition

before it. I should have the strongest confidence that a favorable decision would be made, if I was satisfied that the members had attentively read the documentary evidence printed by their order.

Mr. McCOR observed, that much of the debate on this question might have been spared. We had not now to discuss the merits of the claim, but whether it had been paid or not. It was easy now, after the lapse of thirty years, when the persons and circumstances at first concerned, were nearly forgotten, to draw constructions either for or against the claim. For his own part, he should have no objection to pay, if he were not fully satisfied that this demand had been paid already. There was a report from the Committee of Claims, in the year 1803, one year after the treaty of cession, in which the committee say that a question had arisen at the previous session of Congress, whether or not this claim was embraced in that treaty. How did the House get this notion in 1802? The Attorney-General furnishes the clue to this question. The subject, it seems, had been talked of between the commissioners, and his understanding, from that conversation, was, that these claims were included. This officer, it will be observed, was called upon while his recollection of the transaction was still fresh, and he does declare, unequivocally, that the joint commissioners insisted that they had a claim for an amount which the United States unreasonably withheld. If they had such a claim while the treaty was in agitation, what was more reasonable, or what could be more natural, than to conclude that this claim would, of course, be embraced in the treaty? In the act of cession, on the part of Virginia, there is a clause similar to that in the treaty with Georgia, except that lands are stipulated instead of money. The expenses in relation to the lands now included in the State of Tennessee, and which were then stipulated for, were expenses of a military kind. The gentleman from Georgia is certainly mistaken in supposing that the General Government held itself bound for the expenses of these Georgia militia. On the contrary, they objected to the payment, and disputed the claim, because the operations on the Georgia frontier were of an offensive character. The Government did not pay the \$18,000 referred to, because provision was made for it in the treaty.

The question was then taken on Mr. TATTNALL's motion for recommitment, and decided in the negative, and

The report of the Committee on Military Affairs, adverse to the present claim, was agreed to.

WEDNESDAY, February 16.

*Public Lands in Ohio.*

On motion of Mr. VANCE, of Ohio, the House then went into Committee of the Whole, Mr. SAUNDERS in the chair, on the bill to pro-

vide for the relinquishment of certain claims for lands sold, by the United States, in the State of Ohio.

Mr. RANKIN (Chairman of the Committee on the Public Lands) explained the circumstances of the case, on which the bill is founded.

In 1784, Virginia ceded to the United States the North-western territory, out of which the States of Ohio, Indiana, and Illinois, have since been formed. Previous to this cession, Virginia had promised to her continental soldiery a certain rate of land as bounty. In order to fulfil their promise, that State set apart a certain tract of land in Kentucky, and in the act of cession above referred to, it was made a condition that, if this tract in Kentucky proved insufficient to satisfy all the bounty warrants issued by Virginia, Congress should set apart another tract north of the Ohio, and between the Scioto and Miami Rivers, (in what is now the State of Ohio.) Soon after the cession, about the year 1788, many unauthorized locations were made between those rivers, before the tract was set apart by Congress. These locations, Congress declared to be invalid. In 1790, Congress having evidence on the part of Virginia, that the tract in Kentucky was insufficient, set apart this tract between the Miami and the Scioto, according to the stipulation in the act of cession. No difficulty occurred in fixing its boundaries on three of the sides, because these consisted of the rivers Ohio, Scioto, and Miami; but some difficulty did occur in fixing the remaining boundary line from the source of the Scioto, to the source of the Miami, both which points then lay in the Indian country. In 1804, Mr. Ludlow, the United States surveyor for that district, ran what he supposed to be the true line. All the lands east of this were subject to the Virginia warrants. All the lands west of it were held to belong to the United States, and were sold accordingly; but the accuracy of this line being disputed, commissioners were appointed on the part of Virginia and the United States, by whose direction a second line was run by another surveyor, called Roberts, which started from the same point, viz: the source of the Scioto, but ran towards a different point, now found to be the true source of the Miami. Thus there occurred a gore between Ludlow's line and Roberts' line. Upon a suit to try the question, the District Court of the United States decided, that the land in this gore was subject to the Virginia warrants—but the land had already been sold by the United States to actual settlers. To those persons now deprived of their settlements, compensation was to be made, and the Committee on the Public Lands had come to the conclusion, that the rate of this compensation ought to be regulated by the valuation of these lands, made in obedience to an act of Congress, at the last session. The gore contained 14,000 acres, and the valuation of the land, exclusive of improvements, amounts

to \$80,000. The present bill provides that this sum should be put into the hands of the President of the United States, for the purpose of quieting all location claims prior to the year 1812.

The bill was then reported without amendment, and ordered to be engrossed for a third reading to-morrow.

THURSDAY, February 17.

*Illinois Canal.*

Mr. COOK moved to take up the bill granting a certain quantity of land to the State of Illinois for the purpose of aiding in opening a canal to connect the waters of the river Illinois, with those of Lake Michigan.

The motion was carried—ayes 65, noes 63.

The House accordingly went into Committee of the Whole, Mr. CONDICT in the chair, on that bill;

Which was amended by the insertion, at the end of the third section, of a proviso, that no titles to the lands granted should be valid against the United States until the canal should have been completed. A fourth section was added, which applies the residue of the proceeds of these lands, after the whole expense of the canal should have been defrayed, to the promotion of learning within the State of Illinois.

TUESDAY, February 22.

*Massachusetts Militia Claims.*

A Message was received from the President of the United States, by Mr. Everett, (of which a copy appears in the proceedings of the Senate of this date.)

Mr. CROWNINGSHIELD moved that the message be referred to the Military Committee.

Mr. WEBSTER said he did not rise to oppose the reference which his honorable colleague had proposed. He did not know that that might not be a proper disposition to be made of the communication. He was sorry—most truly sorry, however, to be obliged to say that this measure did not seem to advance the claim—even that part of it which was admitted to be just—a single step nearer payment than it was before. He did think it a little extraordinary, that it should be thought necessary to apply to Congress at all, for the payment of that part of the claim which seemed to be admitted to be free from any well-founded objection. He, for one, could not acknowledge himself satisfied with the course which had been adopted, or to so much of this claim as was acknowledged to be just. Why, if just, has it not been paid, like other claims? As far as he was concerned, as a member from the State, he should only ask for justice. He wished for nothing else, neither now nor hereafter. He hoped the present motion was made, under an expectation that the committee would report a bill for the immediate payment of whatever

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was found justly due. He thought the State had a right to expect this; and if it could not be obtained, without the aid of a law, he did hope, most earnestly, that a proper bill would be at once reported. It was time, he thought high time, that justice should be done to the States concerned, somewhere. And if a law were necessary, he hoped it would pass without further delay, so far at least as to provide for paying what seemed admitted to be due.

The motion to refer the message prevailed.

THURSDAY, February 24.

*Chesapeake and Ohio Canal.*

Mr. MERCEK moved to discharge the Committee of the Whole from the consideration of the bill "to confirm the acts incorporating the Ohio and Chesapeake Canal Company;" which was carried.

The House accordingly took up the bill.

The following amendment, formerly offered by Mr. McKIM, to the second section of the bill, was read and agreed to:

Strike out from the word *thereof*, in the twentieth line, second section, and insert "for their decision thereon; and if Congress should be of opinion that the said canal may be cut in the manner proposed as aforesaid, without impeding or injuring the navigation of the Chesapeake and Ohio Canal, the same shall be conclusive thereon."

Mr. MERCEK moved to insert, in the 17th line, the words, "over the District of Columbia;" (which confines the sanction given by Government, to that part of the canal which lies within the District.)

The amendment was agreed to.

Mr. RANKIN moved to amend the first section of the bill, by striking out all after the enacting words, and inserting the following:

"That the act of the Legislature of Virginia, entitled 'An act incorporating the Chesapeake and Ohio Canal Company,' be and the same is hereby ratified, and confirmed, so far as may be necessary for the purpose of enabling any company, that may hereafter be formed by the authority of said act of incorporation, to carry into effect the provisions thereof in the District of Columbia, within the exclusive jurisdiction of the United States, and no farther."

Mr. MERCEK opposed the amendment, and asserted that the language employed by the United States, in granting the incorporation, should correspond to that used by Virginia and Maryland for the same purpose. He combated the idea of any danger arising from the terms employed in the bill, and gave reasons to show that the concerns of the company required its provisions.

Mr. SHARPE thought, that, as the bill was now so different from what it was when reported by the Committee on Roads and Canals, he was at a loss clearly to understand it; it had better go back to the committee. He doubted whether the route contemplated by the company was as good as that by the Susque-

hanna. In order to give more time for examining the subject, he moved to lay the bill on the table; but withdrew the motion at the request of

Mr. TRIMBLE, who explained the object proposed, which was simply that the Government should give the same permission with respect to the District of Columbia, as Virginia and Maryland had done respecting their own territory. As to the question whether some other route was preferable to that in view by the company, now to be incorporated, it was a question for the subscribers to the stock to consider; Congress had nothing to do with it in giving leave that the canal should come through the District of Columbia.

Mr. SHARPE disclaimed all opposition to the construction of a canal from the Ohio to the Chesapeake, but did not believe that this company, or any other, would ever accomplish the object. The real plan in view, by the friends of the bill, was first to get this act, and then, at next Congress, to ask an appropriation of from twenty-five to fifty millions of dollars. Such was the doctrine which had been held in the committee room. He had no objection to Internal Improvements, and was willing to appropriate liberally to promote them, provided the several States enjoyed their shares. But he was opposed to going into this measure before surveys had been obtained. Some Engineers said it would require 500 locks to ascend the mountain. Nor was it certain that there was sufficient water on the summit level, &c.

Mr. STORRS hoped the bill would not be laid on the table. Nothing else was asked than merely permission for the canal to go through the District of Columbia; if more than this was sought, he should decidedly oppose it. But he thought that this would be secured by the amendment of the gentleman from Mississippi. If the latter part of the bill should be retained, it would amount to an express act of incorporation by Congress to this company—to this he should object, as bringing the House under a virtual pledge to do more. He was not opposed to the design of the canal, and he would vote any thing in reason to promote it; but he thought the amendment gave all that was now needed or asked.

Mr. MERCEK felt it due to himself to vindicate the bill from the imputations of the gentleman from New York. It was the first time he had ever known the private conversations of gentlemen in a committee room, brought forward on the floor of this House to prejudice a measure under discussion. What the personal views of individuals, as to certain great plans of internal improvement, had to do with the question before the House, he was at a loss to conceive. The conversations alluded to, did not, however, embrace this canal only, but many roads, canals, and other measures of a general character; and it was for the whole of these that the millions mentioned by the gentleman had been talked about.



Mr. M. denied that the bill was so greatly changed, and he adverted, in order, to the amendments which it had undergone. In reply to Mr. STORRS, Mr. M. admitted that the bill was an act of incorporation—such was its avowed object; but he contended that no evil could legitimately grow out of it, especially as now limited by one of the amendments. He opposed the amendment of Mr. RANKIN, as defective in several provisions, which were secured by the bill as reported, particularly respecting toll.

Mr. RANKIN supported the amendment. His main objection to the bill was, that it went to mingle the powers of the General and State Governments. He thought the views of the gentleman from New York, (Mr. STORRS,) were perfectly correct. The act of Virginia, now proposed to be confirmed, appointed commissioners for this work; if this were re-enacted by Congress at the next session, they would hear that they were bound to patronize the design by large appropriations, as they had put their sanction on it, by appointing commissioners. He thought the powers of the General and State Governments should be kept as distinct as possible. If the General Government engaged in internal improvement at all, it should either be by taking the work into their own hands entirely, or by subscribing to the stocks of private companies. The bill proposed neither. The moment the bill passed, Government might give up all the surveys made over the mountains; the whole design would thenceforth be a private concern. The amendment gave the company all which he thought they ought to ask, or expect.

The question was then put on the amendment, and carried—ayes 83, nays 58.

And the bill, as amended, was then ordered to be engrossed for a third reading to-morrow.

#### *Maison Rouge Grant.*

An engrossed bill concerning the grant of land to the Marquis de Maison Rouge, was read a third time.

Its passage was opposed by Mr. SANFORD, of Tennessee, and advocated by Messrs. ISAACKS, CAMPBELL, and J. T. JOHNSON; when, on the question being put, it passed by a large majority.

FRIDAY, February 25.

#### *Chesapeake and Ohio Canal.*

An engrossed bill to confirm the act of the General Assembly of Maryland, confirming an act of the General Assembly of Virginia, to incorporate the Chesapeake and Ohio Canal Company, was read a third time, and the question being, "Shall this bill pass?"

Mr. COCKE demanded that it be taken by yeas and nays, which was ordered.

The question was then put, and decided in the affirmative, by yeas and nays.

So the bill was passed; its title was altered to read as follows: "An act confirming the act of the Legislature of Virginia, entitled 'An

act incorporating the Chesapeake and Ohio Canal Company,' and an act of the State of Maryland, confirming the same;" and then it was sent to the Senate.

MONDAY, February 28.

#### *Florida Coast Wrecks.*

Mr. WEBSTER, from the Committee on the Judiciary, reported a bill "concerning wrecks on the coast of Florida."

Mr. WEBSTER explained the circumstances under which the bill came before the House. It was the bill to which the President refers in his message, as having been passed and approved last session, but omitted to be signed. The opinion of the Judiciary Committee was, that the bill had no validity until signed by the President, and they therefore now reported the bill in its original form, but having a prospective operation only.

Mr. CALL stated that the act had been understood as in force, and had, in its operation, produced a large revenue to the United States.

The bill was ordered to be engrossed for a third reading this day.

#### *Abolition of the Slave Trade.*

Mr. MERCER laid on the table the following:

*Resolved*, That the President of the United States be requested to enter upon, and prosecute, from time to time, such negotiations with the maritime powers of Europe and America, as he may deem expedient for the effectual abolition of the slave trade, and its ultimate denunciation as piracy, under the law of nations, by the consent of the civilized world.

This resolve lies for one day, of course.

Mr. CONWAY, of Arkansas, offered the following:

*Resolved*, That the President of the United States be requested to cause a survey to be made of the obstructions in Red River, usually denominated rafts, and cause an estimate of the expense necessary to remove the same, to be laid before Congress at the next session.

Mr. CONWAY stated what had formerly been done on this subject, and explained the object of the resolution.

Mr. LIVINGSTON advocated the resolve, and Mr. SHARPE opposed it as unnecessary, and moved to lay it on the table; which was carried.

TUESDAY, March 1.

#### *Suppression of Piracy.*

On motion of Mr. FORSYTH, the House went into Committee of the Whole on the state of the Union, (Mr. COCKE in the chair,) on the bill from the Senate for the suppression of piracy. The bill was read by sections, and gave rise to the following debate:

Mr. FORSYTH, Chairman of the Committee of Foreign Relations, (to which committee the subject was referred in this House,) rose, for the purpose of briefly stating what would be the effect of the bill. For this purpose he gave

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a short summary of the amount of each section. The first section, he said, went to increase the present number of our sloops of war—a class of vessels now considered by the Executive as peculiarly fit for this service. It was true that, in 1822, a different opinion prevailed, and measures were taken corresponding to that opinion.

The second section authorized the President to direct the officers, commanding this squadron, to land their forces when in fresh pursuit of pirates, to withdraw from the jurisdiction of Cuba and Porto Rico the persons apprehended, and to bring them to the United States for trial.

There did not exist any necessity for granting this provision of the bill, since the President has it already by the law of nations. And Mr. F. thought this part of the bill objectionable on another account. It referred only to Porto Rico and Cuba—but, if the right exists, it exists in relation to all other places, as well as to these islands. And if it does not exist, and is to be given by this bill, it ought to be given in relation to all places. If the section was proper at all, it ought to be made universal in its form.

The third section restricted the carrying of specie by armed vessels of the United States, unless when expressly permitted by the President of the United States, or the Navy Department. According to representations of our agent in Cuba, serious injury had resulted to the commerce of the United States, from this practice. The force which was intended to be employed in guarding that commerce against pirates, had been diverted to a different purpose. The section was intended to remedy this state of things.

The fourth section secured on all recaptures by merchant vessels, a certain salvage. The reasons for such a provision were obvious. But they did not apply more to Cuba or Porto Rico, than to all other parts of the world. Piracies exist in the Indian ocean; merchant vessels are armed by law, and are entitled to the same salvage there as in the West Indies. This section, if adopted, therefore, ought also to be universal.

The fifth section provided for the capture of piratical boats, &c., by vessels of the United States, and the distribution of the proceeds. The sixth section requires that no armed merchant vessel shall receive a clearance until bond has been given in double the value of the vessel, for the correct conduct of the officers and crew on board, and to secure their obedience to such instructions as shall be given by the President of the United States. The act of 1818 requires that all merchant vessels, arming in self-defence, shall give bonds for their correct conduct. The only difference between that act and the present, in this respect, is, that the amount of the bond is varied; by the act of 1818, the penalty is double the amount of vessel and cargo, and no obligation to obey the President's instructions is required.

The seventh section authorized the President to give suitable instructions to armed merchant vessels.

The eighth section allowed five per cent. of all prizes taken, for a pension fund.

The ninth and tenth sections designated the persons to whom the pensions are to be paid. The ninth provides for officers, and the tenth for widows and children.

The eleventh and last section limited the operation of the law to one year.

Having thus gone through a general sketch of the provisions of the bill, Mr. F. adverted to the report of the Committee of Foreign Relations, on this subject.

That committee conceived that no legislative provisions were required by the posture of our affairs with Spain. For the reasons given in their report, our just claims upon Spain for spoiliations committed by Spanish officers, acting in obedience to Spanish decrees, and under Spanish commissions, should not be at present vindicated by the exertion of our power. The promised Minister, who comes with full authority to stipulate their payment, should be heard. Mr. F. could not, without doing injustice to his own opinions, avoid stating that he felt no confident expectation that justice would be done to the United States on the arrival of the recently appointed minister. He apprehended that the object of this mission was "*to gain time*;" the aim and the end too of all Spanish negotiation, and in which their diplomatists were eminently successful. As yet, however, the Government of Spain had not derived any signal advantage from the success of their labors. We shall, no doubt, be compelled, eventually, to do justice to ourselves, but, for our own character, he desired that measures of compulsion should be delayed to the last hour. Without recalling to the recollection of the committee the suggestions contained in the report, Mr. F. would make a single remark, which would place the members in possession of the views of the committee.

The situation of Spain was deplorable, and ours, in relation to Spain, peculiar. Spain had vast and rich possessions in our neighborhood. The Government was imbecile. Her colonies will be the property of any power that chooses to take them. It is the common sentiment of European politicians, that Spain must fall to pieces, and that the United States are happily situated to take advantage of that event. Mr. F. was deeply anxious to satisfy all mankind that the Government of this country looked forward to no such advantages, and that, if ever any portion of the dominions of Spain came under our power, our conduct should bear the scrutiny even of those most anxious to fix upon us the charges of ambition and avarice.

As it regarded the piratical depredations upon our commerce, and that of the rest of the world, Mr. F. said, no *extraordinary* measures were deemed necessary or proper. The Executive has all the power necessary for the sup-

pression of piracy. If means are wanting, they should be given: If men are wanted, authorize their enlistment: If money, appropriate it: If a naval force of an unusual description, authorize its creation. Give all that is needed, and hold the Executive responsible for a just and effectual application of the means afforded. But no measures of an extraordinary character would be either for the interest or honor of the United States. By extraordinary measures, Mr. F. meant such measures as operated upon the Government of Spain, and would only be justified on the principle, that the Spanish Government was responsible for the acts of the pirates. The correspondence with the Spanish Government, laid before the House by the President, shows that our Executive does not hold Spain responsible for the piracies committed by persons who either sail from, or take refuge in the dominions of that power; nor has any step been taken to create that responsibility. The only application officially made is, for co-operation in putting down the pirates, and for permission to our forces to enter Spanish territory for that object. In December, 1822, prior to any official application from the United States, the Constitutional Government officially announced to the United States, that the naval force of Spain should be increased on the stations of Cuba, Porto Rico, Porto Cabello, and St. Juan de Ulloa, for the express purpose of suppressing piracy; and that orders were given to the Commanding General at Havana, to exterminate the pirates. In March, 1823, Gov. Mahy had issued at Havana a decree prescribing severe regulations of police to prevent piracy, and to facilitate the detection of the crime, should it be committed by persons belonging to the island of Cuba. In May, 1823, Gen. Vives issued a circular to the local authorities to aid Commodore Porter, then arrived on the coast, to suppress piracy. The correspondence of Commodore Porter proves that this aid was given; and so important did he deem this co-operation, that, in order to prevent any interruption of it, he sent off from Thompson's Island, a privateer of Colombia, lest he should be supposed desirous to give shelter and aid to a vessel which was interrupting the commerce of the island of Cuba. Within the last five days a correspondence has been published, in which Commodore Porter expresses to Gen. Vives his hearty thanks for the co-operation of that officer and those under his command. With this show of anxiety to do what is right by Spain, and her chief officer, added to the punishment of pirates in Porto Rico, which are known to have been inflicted, it would be scarcely justifiable to adopt any measures against Spain, especially as we have never given notice to Spain of such an intention. The United States have not yet said to Spain, Suppress these abominations, or we will hold you, in the sight of God and man, responsible for them: Exercise your power, or we will exercise our power. Until this was done, we

should not think of acting upon Cuba. It was but too true, that an infamous depravity of moral feeling prevailed in Cuba on the subject of piracy, and the corruption of Spanish tribunals was sufficiently notorious. Can we act upon the dominions of a foreign power because the people are vicious, or the tribunals impure? The laws of nations do not permit us to enter into crusades for the correction of the vices of our neighbors, nor to enter into their territory to inquire into the purity of their tribunals. However well convinced we may be of their corruption, we cannot say that we, the people of the United States, are more unjustly treated than other foreigners, or than Spanish subjects. The charge of corruption has been of long standing against Spanish tribunals, with probably but too much reason. The mode of administering the laws leads naturally to corruption and injustice. Judges, often a single judge, decides upon matters of law and fact—the witnesses are examined *ex parte*; and whenever a suit begins, the first effort of the parties litigant is to influence the judge in their favor, by favor, flattery, or something worse. The judges, however, are, in one thing, quite impartial, they are as ready to be *influenced* on the right side as the wrong one; and when justice can, and will wield a purse as long as injustice, the tribunals of Spain can be trusted as safely as other tribunals. The rule of international law is well understood even in matters of property; every definitive sentence, regularly pronounced, is to be esteemed just, and executed as such. The rule admits of exceptions: they are, when justice is refused to a foreigner—palpable or evident injustice done, or rules and forms openly violated—or, finally, an odious distinction made to the prejudice of foreigners. In these cases, the Government whose tribunals are unjust, is responsible. Justice is, however, to be sought in the usual form, by regular demand upon the Government itself. You cannot, either by a well-founded charge of criminality in the population of Cuba, or of the corruption of the Spanish tribunals, act against the Spanish dominions without a previous demand of justice at the hands of their Government.

Mr. FORESTH said he should have come to this conclusion with the greatest pain, if the documents did not prove that ordinary measures were sufficient to prevent piracy, when properly and exclusively devoted to that purpose. Whenever our naval power was where it ought to be, piracy was suppressed. The moment that power was withdrawn, it revived, and with additional horrors. He hoped that the naval force provided, or to be provided, would be faithfully devoted to prevent piracies; and if there was too much reason, from past experience, to dread their recurrence, that explicit warning would be given to Spain, that we should, hereafter, act upon Cuba or Porto Rico, if it should be necessary for our security or repose. Mr. F. was solicitous that no step

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should be taken by the United States which they should consider not justifiable, if taken, by any other commercial nation. If authority to invade Cuba is given, where will you stop? Resistance to a temporary descent will be followed by conquest and continued occupation. If the whole is occupied, how will it be reclaimed? The consequences are apparent. The principle which justifies us will justify any other commercial power. England, France, Russia, may take and keep possession of Cuba for the common good of the commercial world. Suppose England (I take this Government as an example, because, *quo ad hoc*, she is the strongest, probably not more ambitious than either of her allies) should think proper to seize Cuba, could we permit that power to hold it undisturbed? With Halifax on the north, and Havana at the south, she would hold the ends of the bow string by which your coasting trade would be throttled at her pleasure. The commerce of the West Indies, and of the Gulf of Mexico, might be doled out to suit her convenience. I, for one, never will calmly look upon such a state of things. Let me not be misunderstood. I love neither the Government nor the people of Spain. The Government is detestable, and the people are scarcely worthy of a better, or they would long since have obtained it. But the Spanish Government and Spanish subjects, if not good, are not dangerous neighbors, and I prefer them infinitely to those who are.

Mr. FULLER said, that an examination of the provisions of the bill would show that it involved no question in regard to our negotiations with Spain; and that, consequently, the observations of the gentleman from Georgia (Mr. FORBES) as to the present state of those negotiations, appeared to him unnecessary, and required no reply. The committee, of which that gentleman was chairman, had indeed reported at large their views; and whether they were correct or not, it was useless, in discussing the merits of the present bill, to determine. No attack upon Spain or her territories is contemplated, nor can any collision with her rights be apprehended by its adoption. It was, therefore, Mr. F. said, superfluous to settle any nice points of diplomacy, by considering whether we had borne the outrages of the pirates, and demanded redress from Spain for the shelter and countenance which they had received in her islands, long enough to justify against her an appeal to force or not.

Mr. BARTLETT, of New Hampshire said, he hoped for the indulgence of the committee a few moments. It was a request that, even at this hour, could not be granted with more reluctance than it was made. If an apology were necessary, it is in the nature of the subject before us—in a feeling, almost personal, which he could not easily control, excited as it was by the peculiarly aggravated sufferings of his immediate constituents. The object of our present legislation is the suppression of piracy.

A purpose, for which, said Mr. B., I know the opinion of many is, that the times demand of us *action*, rather than deliberation. But, sir, to act may be worse than in vain, unless we act efficiently. We betray our merchants and seamen into peril, by reliance upon *pretended* protection, and give confidence to the enemy, by our imbecile efforts. Could I believe the measure proposed calculated to effect the object desired, I would not, for an instant, stand between the proposition and the final decision upon it by this House.

Is piracy of a character, and has it existence to an extent, to demand of us effectual measures for its suppression? A question the whole country has answered; and yet, sir, our apparent indifference on this subject, and the *negative* character of the measures proposed, seem to reverse that decision. A general assent is, perhaps, yielded to the prevalence of piracy, without that deep feeling of the character and extent of the enormity, necessary to prompt us to efficient legislation. The scenes of blood which, for years, have been exhibited, not in Europe, not in South America only, but within our own borders, have rendered us too insensible to their repetition; and the cries of our suffering citizens, which are borne to us on every southern breeze, are still mingled with the din of foreign war. The high excitement of feeling, produced by the accounts of the first piratical depredations, seems lost in apathy at recent recitals of their aggravated horrors. But, sir, situated in the midst of a suffering community, the subject addresses itself to me in a manner that cannot but be felt. From the lips of one of the sufferers, whose life, policy, and not mercy, spared, have I heard the story of piratical torture. He was a gentleman of highly respectable character, and unquestioned veracity. Near the harbor of Havana, he was boarded by pirates—instantly felled to the deck with repeated blows—thrown headlong into the hold of the vessel—there assailed with daggers, and passes made at his throat and through his flesh—hanged by the neck to the yard-arm;—after being cut down and lying till symptoms of returning life appeared, he was then literally whipped through our whole squadron—at each blow of the rope, being told the name of the vessel for which it was inflicted. The horrid cruelties connected with the murder of Captain Blount, can hardly be realized, but by those who knew him as one of the most valuable citizens of Portsmouth—by those who witnessed the grief of his numerous relatives—the inconsolable sorrow of an afflicted wife and family. To that ill-fated neighborhood is carried the recent account of the capture of the brig commanded by Captain Hilton—with the murder of the crew—the bearer of the sad intelligence being compelled to say, “I alone have escaped to tell thee.” And, within the last two days, a report has reached me, which I pray Heaven may prove untrue, of the destruction of another ship from

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Portsmouth, by the same hands, and the death of every individual on board. But it was not my purpose to have referred to particular instances of a crime, records of the repetition of which fill every gazette, till our surprise is, not that our vessels are captured, our citizens murdered, but that one escapes. In the letter of our agent, of the 6th of September, after a long catalogue of other captures, he says, "In the bay were found the wrecks of twelve vessels, recently destroyed by the pirates, the crews of all which are supposed to have been murdered." Such are the monuments the island everywhere exhibits of their plunder, while the coast is whitened with the bones of their victims. Well might the honest seaman, who recently witnessed and gave account of these scenes, conclude, as he did, with the exclamation, "How long! how long will our country suffer these horrid deeds!" Are the measures proposed by this bill such as *must*—such as probably *may*, accomplish the object desired? What is proposed? The chairman of the Committee on Foreign Relations has stated to you, very distinctly, the purport of each of the eleven sections, which, in short, is—a provision for building sloops of war; authorizing fresh pursuit of pirates; prohibiting freighting specie, but by order of the President; regulating armed merchantmen; providing for distribution of prize money, by capture of pirates, and creation of a pension fund from the same.

Will either—will all these provisions remedy the evil complained of? I answer no. An opinion, I am aware, entitled to no authority further than it may be supported by the considerations upon which it is founded—and in stating the reason of such opinion, it cannot be necessary for me to add professions of the high regard which I entertain for the distinguished gentlemen, personally and officially, from whose views on this subject it is my misfortune to differ.

In our efforts to vanquish, or exterminate the common enemy, we may make war with him upon the ocean, or upon the land, or both. The former mode seems to be relied upon in this bill; and that, by the employment of our national vessels, such attempt will not, cannot, succeed. If a temporary suspension of the enemy's operations could be produced, still the measure is unjustifiable; which, with such profusion of life and treasure, does not reach the source of the evil. It must be ineffectual, from the character of the enemy. Who are these pirates, that we go out with all the "pomp and circumstance of war" to meet them? What injuries do we expect to inflict by our national ships? What trophies are we to gain? They have indeed some small boats, with which they lurk about the bays and harbors; but is it believed they will give battle to your frigates or sloops of war, or attempt to make prize of your captains and commodores? Unless they do, what right have you to molest them? What evidence, unless you take them

in the act of piracy, of their guilt? It is not to be understood, that they carry a label upon their forehead, to designate their character; and should the Gulf of Mexico be covered with these "gentleman rovers," as they may choose to be called, we have not the proof, and therefore not the power, to touch them, unless discovered "*flagrante delicto*!" But it may be said, we can, by such means, detect and capture them assailing our merchant vessels; we may, if they first give notice to us of the time and place the robbery is to be committed; but they have the means and the vigilance to discover our national ships at quite as great a distance as their own small boats may be seen from such vessels; and experience proves, that at the moment of the most flagrant outrages, our squadron has sailed round the whole island, and every hour discovered traces of their recent depredations, and yet not touched, or come near to the offenders. Captain Porter, in his letter of April 8th, 1824, after describing a voyage through all the islands, and a minute inspection of the most noted haunts of these robbers, says: "In the course of this long route, although we have visited places formerly the rendezvous of pirates, and saw evidences of their having been recently there, we have not been so fortunate as to capture any, nor have we seen any vessel of a suspicious character, until two days since, when we pursued a small schooner, which took shelter among the Colorado Reefs," &c. Such a result was to have been anticipated from the character of the enemy, as given by the Secretary of the Navy, in his letter of the 1st December, in which he says, "there are few, if any, piratical vessels of a large size in the neighborhood of Cuba, and none are now seen at a distance from the land; but the pirates conceal themselves, with their boats, in small creeks, bays, and inlets, and finding vessels becalmed, or in a defenceless situation, assail and destroy them. When discovered, they readily and safely retreat into the country, where our forces cannot follow, and by the plunder which they have obtained, and which they sell at prices low and tempting to the population, and by the apprehensions which they are able to create in those who would otherwise give information, they remain secure, and mingle, at pleasure, in the business of the towns, and transactions of society, and acquire all the information necessary to accomplish their purposes." That "no naval force can afford complete protection against such a system," is proved by experiment—while, year before the last, of all our vessels of every description in commission, twenty-one of the thirty-one were on that station; and last year, fourteen of twenty-three were in the same service. It is not forgotten that the President, in his message, at the commencement of the last session of Congress, told us these measures had been successful, and that piracy was no more. That was rather the expression of his and our wishes, than of the fact.

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we then had hardly "scotched the snake, not killed it." A momentary suspension of their depredations might have happened till they could better suit their system to our measures. The result has been only to make them more wary, more vindictive, and more numerous. They now more usually take life to prevent detection; and where that is not done, our increased force only adds new tortures to the captive, by an additional rope for every additional vessel. With accounts of such facts is every gazette filled; but where is the record of our success? Reasons for this want of success, I know, are urged, in the shape of charges against the officers employed upon this service; that they neglect the duty upon which they were ordered to engage, in the business of freighting on their own account. No, no; it is an accusation I will not for a moment believe, but upon the most irrefragable proof. Can it be possible, that those gallant men, as distinguished for humanity as bravery, would turn from the cries of their countrymen, bleeding in the hands of robbers, to engage in a pitiful money speculation? That they, whose names are identified with the glory of their country, would sell the mighty meed of their large honors for the contemptible commissions of a cargo! would strip from their brows the wreath which the nation has placed there, to creep into the garb of a miserable Jew broker! Never! never! Nor could the truth of such charge be admitted, without extending its reproach to the Head of the Department, and the President of the United States, who have power to enforce their own orders. The evidence of your official documents is against it. Captain Porter, in his letter of August 10th, says, "the whole history of my operations against the pirates, renders any defence of my conduct, or the conduct of those under my command, against any imputations of neglect, from any quarter, unnecessary, as it is well known to the Department, that we have been devoted to the inglorious service, sacrificing health, comfort, and personal interests, for the sole object of suppressing a system of long continuance, the existence of which was disgraceful to the civilized nations, whose citizens were victims to it." "It is," says our intelligent agent, in his letter of October 1st, "in vain for commercial nations to rely upon mere preventive measures at sea." This experiment, then, of this description of force, has been tried, and fairly tried: and has failed.

If, however, the employment of such force in this manner, had continued a check upon the practice it temporarily produced, so long as it touches not the source of the evil, the sacrifice is greatly disproportioned to the result—and it is inexpedient and impolitic. Are we never again to travel the common highway of nations, but with such formidable array, and its actual presence, to guard our lives? In his letter of July 14, our agent says, "Notwithstanding the large armament maintained by the United

States on this coast, attended with a profuse waste of treasure, and with the sacrifice of the health and lives of so many of their gallant crews, the only result has been, the temporary and partial interruption of the practice, while the source and cause of the mischief have not been reached." If the attempt had not served rather to destroy than save the lives of those intended to be protected, the expense would be of less importance. But the entire want of success has rendered the service, as it is justly called, "inglorious,"—a despondency, a depression of spirits, is produced among the officers and crews which would make them victims of disease in any climate—but when to such causes is added, the unhealthiness of that station, we have daily melancholy proof of the sacrifice we make. I have before me an official list of more than eighty officers, who have perished in this service in two years past. I forbear to repeat from that list, names familiar to this House—names dear, not to their friends only, but to their country.

But another provision of the bill relates to the *permission* for merchant vessels to arm. The arming of merchant vessels is undoubtedly the only effectual mode of making war with pirates on the ocean. Captain Porter, in his letter of the 10th August, so expressly tells us—and from the very character of the enemy, and the mode of their warfare, we could hardly have needed such authority. Yet there is nothing in this bill but incumbrances upon a *permission* that before existed. And of what avail is such permission? The persons engaged in the West India trade are not wealthy: all such find their way, with better hopes, to the other Indies. They are merchants of small capital, who, with the most persevering industry and rigid economy, can but just keep that commerce afloat. A single gun, and the expense of men, would sink it forever.

True it is, this bill authorizes the *fresh* pursuit and capture of pirates upon the land; but what are we to expect from the *fresh* pursuit of pirates by a force that, in two years' search, has scarcely come in sight of one; and what need have we of an enactment to do that which we are authorized to do without it? While nothing is added, by implication it takes away the right we always possess to attack them at all times and in all places. But this, it is said, would be war; war with whom? I must dissent from a conclusion stated in the report of the Committee of Foreign Relations, high as is that authority, on this subject. In that report, it is alleged that Congress cannot authorize the pursuit and capture of pirates, in the towns upon the island of Cuba, "without wresting from Spain her municipal jurisdiction." If Spain has not the power herself to arrest and punish them, then we wrest from her no jurisdiction. If pirates are protected and aided in such towns, and Spain does not choose to exercise such power, then the inhabitants of those places are partakers in the

crime, and Ferdinand himself is the king of pirates. Sir, I am for peace—that peace which secures us protection in our lives and property—not a nominal peace, the fruits of which are only rapine and murder. By the chairman of that committee, we are just told, that Spain is not notified that we hold her answerable for such outrages. However informal may have been the notice, the repeated, the loud complaints of our sufferings must, long since, have reached even the heavy ears of that Government. Two years' display of our forces upon her shores, and the demands for her interference, must have made her understand our complaints of wrong, and claims for redress. One year since, from the same source, further deliberation was advised; it is still urged. It is presuming too much, to believe that such a suggestion can be heard with calmness by those of our countrymen who are suffering the cruelties of these barbarians. But we must wait, it is said, for further negotiation. When we were colonies of Great Britain, and Jenkins, whose case has recently been referred to, suffered some indignity from a Spanish cruiser, he was brought to state, in person, his wrongs before the legislature of the nation, and the exclamation then was, not to *negotiate*, but to require concession and indemnity, as a *sine qua non* to the commencement of negotiation. I am willing to make all reasonable sacrifices to the etiquette of diplomacy—outfits, salaries, and time of Ministers; but not to add the offering of hecatombs of our fellow-citizens.

It has been my purpose to show—

That increase of our naval power, to be employed as is contemplated, promises no efficient remedy for the evil complained of:

That, while it does not afford us protection, it is prodigal both of life and treasure:

That a mere *permission* to merchant vessels to arm, is perfectly nugatory:

The idea of rewarding *captors* of pirates out of their prizes, and pensioning the wounded and widows of the slain, out of five per cent. of the proceeds, seemed to me not to require so much elaborate detail of legislation; in truth, that all the bill proposes is, to build ten sloops of war, a part of which, some years hence, may be at sea.

On the other hand—That our duty requires of us to furnish merchant vessels with armament, and to authorize reprisals upon the inhabitants of Cuba: That these measures are *demanded*, to avenge the insulted sovereignty of our country, to rescue our violated flag from the bloody hands of barbarians, to shield the unprotected heads of our citizens from the lifted axe of the murderer.

Mr. FORSYTH rose, in reply, and observed, that his opinions must have been very badly expressed, if gentlemen could suppose that he had intended to deny that piracy exists—that it exists in an atrocious form, and ought to be suppressed. But I think, said Mr. F., that the President now has, and has had, both means

and power to suppress it. This bill is useless; it diminishes the executive power. All that is sought, by the President, in his communication on this subject, is authority to go to the Spanish islands. The Committee of Foreign Relations think that he has already power to go to those islands, and to all the islands in the world. The law of nations gives him this power, as the Executive Magistrate. Why, then, are we called to legalize the act? Is it because there exists some fears that the Executive will be blamed for not having done his duty? Why has piracy not been suppressed? Because the force given to suppress it has been withdrawn. But, inasmuch as complaint is made that the means are not adequate, I am willing to give more means. Two years ago you were told the same thing—the means were inadequate. And you then gave what was supposed to be sufficient, and what you were told, subsequently, effected the object.

In 1822, you were told that light vessels were wanting, to go into the shallow waters; and you gave them. Now you are told that the pirates withdraw from the shallow waters and go into creeks; and that launches are wanting to follow them. Could not launches follow them into creeks last year? Where are all the amount of means that you gave? Dissipated like chaff. The attention of this House and of the public was lately called to a large vessel, recently fitted out. It was a magnificent object, and gentlemen left their seats here to contemplate it with admiration. But the money that it cost would have been better spent on a squadron for the West India Station. Where is this magnificent vessel to be sent? Report says on a Quixotic expedition up the Mediterranean, where it is to display the greatness of our nation and bear what is called the broad pendant. The simple state of the question is this: pirates have been suffered to exist when they ought not. The President says he wants powers. He has had powers. He says he wants means. He has had means. I would not, said Mr. F., shelter from responsibility any officer of the Government, however high may be his station. The President has wanted neither men nor money. This House has done its duty. A strange opinion seems to have gone forth, that this is a degrading service; that the foe is worthless, and that victory will, therefore, be inglorious. I am of a different opinion. These are the only victories which may be said to be unstained. I am content to leave the task to our naval heroes. I believe them to be fully sufficient successfully to accomplish it. I trust they will continue as they have done to strike down these murderers.

Mr. P. P. BARBOUR said that he had supposed some other gentlemen would offer the motion which he was now about to present. But, as they had not done so, he moved to strike out the second section of the bill. The purport of that section, as he understood it, was to impart to the President the power of

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Suppression of Piracy.

[H. OF R.]

ordering our forces to land in fresh pursuit of pirates. He objected to any such enactment, as this power was not the subject of municipal legislation. All the authority of gentlemen, on that subject, was derived from national law, and there was a want of fitness in legislating on what the law of nations already settles. The principle of that law, as to pirates, was, that they were enemies of the human race, and that, as such, all Governments were, *ipso facto*, always at war with them. We have a right to suppress piracy, according to the law of nations, and that law expressly allows of landing in fresh pursuit of an enemy.

We cannot increase our rights in respect to other powers by municipal legislation, and certainly we do not wish to diminish them. The principle by which we are to be governed is obviously this: If we wish the Executive to act intraterritorially, then a municipal act directs him what to do. But if we wish him to act extraterritorially, his act falls within the law of nations, and a municipal law is therefore useless. The law of nations is the rule of the Executive, without our saying so, and he has the same right to carry that law into effect which he has to carry into effect any municipal law. All our rights as a nation already exist, and depend on sources beyond our control. For these reasons he thought it was proper that the section should be stricken out, and not because he was opposed to landing in fresh pursuit of pirates.

Mr. POINSETT expressed his agreement with the views of the gentleman who had just taken his seat. He had intended to speak on the general subject, but considering the lateness of the session, and the time which had already been occupied, he relinquished that intention, and implored other gentlemen to do the same, and let the House vote on the bill.

Mr. STRONG expressed a similar sentiment.

The question was then put on striking out the second section, and carried.

Mr. STRONG then moved to strike out all the remainder of the bill after the first section. On the call of Mr. HOOKS, these sections were read.

Mr. WEBSTER observed, in relation to the third section, (which restricts the carrying of specie except as ordered by the President,) that he presumed the Committee on Foreign Relations could tell the House whether any thing now existed to prevent the President from giving such instructions as are contemplated by this section. It was certain that great complaints existed in relation to this matter. They were known to exist in Britain on the same subject. And notwithstanding what had been observed by the gentleman from New Hampshire, much dissatisfaction was felt.

Mr. CROWNINGSHIELD observed, in reply, that the President has full power—that when he formerly held the office of Secretary of the Navy, he had himself issued directions on the subject.

The remaining sections were then stricken out.

Mr. FULLER offered a substitute, which, after a short discussion, was rejected.

Mr. WEBSTER moved to strike out the words, “for the more effectual suppression of piracy in the West Indies,” (which follow the authority to build the vessels.) He thought the House ought to be careful to avoid all encroachment on the power of the Executive. He believed there was no necessity for particularizing the purposes for which we build vessels. The true course was for the Executive to state what he needs, whether in men, ships, or money; and if we conclude to grant it, we are to leave him to use it on his own responsibility. For his own part, he believed that sloops of war would be necessary in times of peace as well as war, and after piracy should be suppressed as at the present.

The motion prevailed, and the words were stricken out.

Mr. FULLER proposed to add a section to the bill, empowering the President to dispose of the schooners and other vessels at present in use, and which were in a state of decay.

Mr. CROWNINGSHIELD offered a section of somewhat greater extent, and suggested to Mr. FULLER to accept it instead of that proposed by him. Mr. FULLER consented, and the section was adopted.

Mr. BUCHANAN then moved to amend the bill, by reducing the number of sloops of war from ten to five, and the sum appropriated from \$500,000, to \$425,000.

In support of his motion, Mr. B. observed, that the present was a bill for the suppression of piracy, and not for the increase of the Navy. He thought that if Congress gave the Executive all he asked, they certainly did all that was needed. The Secretary of the Navy asked only for four sloops of war; he was willing to give him five. (Here Mr. B. quoted the letter of the Secretary.) He thought it was wisest in Congress to keep the power in their own hands. It was manifest, that only 5 sloops could be built, for the \$500,000 would build no more—\$425,000 was sufficient for this purpose, and he therefore proposed that sum. He did not wish to be understood as holding the opinion that it was not proper to increase the Navy, but he did not think it proper to authorize so large an increase of it at the present time.

Mr. WEBSTER hoped that this motion would not prevail. He called the attention of the committee to the situation of the United States, and hoped that while they considered the expense, they would also consider the mode in which it is to be applied. He thought there was much pertinency in a remark made by the gentleman from New Hampshire, (Mr. BARTLETT;) the nation came out of the late war, under a strong excitement in favor of the Navy. The Navy had crowned the nation with glory, and that glory had been won by the use of large ships. Many such were accordingly ordered. But



ships of a large size, put at hazard great sums of money. They are often employed for service which might be equally well done by smaller vessels, which would cost, and which would hazard less. But we have no such smaller vessels. If we looked at the naval service in other nations, we should see what a great disproportion existed between the number of our large and our smaller vessels. The service in the West Indies, and the service beyond Cape Horn, did not require such heavy ships—vessels of a smaller class would answer every purpose, at a far less expense. The gentleman from Pennsylvania, (Mr. BUCHANAN,) says it is enough if we give as fast as the Department asks. But this surely is not a compulsory matter. The Department may ask one thing and we may give another. The Secretary of the Navy asks for frigates, we do not give them—but instead, we give more sloops of war. These will be of important service on our eastern frontier, where the British vessels, to say the least, had committed very great mistakes about the bounds of our fisheries. The same observations would apply to the Mediterranean. In the British Navy this class of vessels were in constant use. That Government had 80 or 100 sloops of war, all actively employed in various species of service, which do not require a great array of power. Why should we not go so far as to build ten of these vessels? A similar measure had been recommended at the last session. We are told that the Executive is to be held bound to do all he can do without further legislation. Let us then pass the bill as it is.

Mr. BUCHANAN observed, in reply, that he was sorry at this late hour to come in collision with the gentleman from Massachusetts. He could not but notice, however, that that gentleman had not thought fit to reply to what he had advanced as a principal argument in favor of the amendment he proposed, that only \$500,000 were appropriated, and five sloops of war would cost \$425,000. Could we not repose confidence in the next Congress; could we not leave them to judge, since only five ships could be built this year, whether five more would be wanting next year? It was vain to say that a number of ships should be built, not exceeding ten, and then to give means only for five. If ten were intended to be given, they would cost \$850,000. Perhaps it was not held politic to spread such an amount before the people. The Senate had passed a bill for ten sloops of war in the early part of last session. But, during all of last session, and all of the present, until now, the House had refused to take up that bill. Was it proper, at this late moment, to enter into a discussion about the increase of the Navy? We had already spent eight millions on the Navy—he wanted to know how this had been spent; and whether the ships which had been built corresponded with the law. He wanted to know whether the ancient discipline was still continued. He doubted the propriety of incorporating in a bill for the suppression of piracy,

provisions which went, in fact, to increasing the Navy.

Mr. TREMBLE, of Kentucky, observed, that he should vote for the provisions of the bill, because he believed that their tendency in practice would be to diminish the expense of the Navy, and to improve its discipline. The complaints which exist, had arisen from the employment of too many large vessels. There would be no need to put all our large vessels in commission, if we should build small ones. This would be a saving of expense, for we are now driven to use the large, because we have no small. Look at the disproportion in the different branches of our service. The whole amount of our commerce to the Mediterranean, is about one million of dollars, and it has one hundred and ninety guns to protect it. Our trade to Cuba amounts to six or seven millions, and it is protected by only one hundred and fifty-eight guns. This irregularity was occasioned chiefly by want of small vessels.

Mr. FULLER observed, in reply to Mr. BUCHANAN, that it was true that \$500,000 were insufficient to complete the ten sloops of war. But the Senate, in passing their bill on this subject, adopted the principle that ten ought to be built, but only half the money appropriated at first, because the whole could not be used at once. Many advantages and much economy would arise from such an arrangement. Contracts could at once be made for the whole of the timber, and materials could thus be more cheaply obtained.

Mr. MCCOY observed, that the bill was now broken down, to what he had at first expected. He thought there was rather an unnecessary agitation about the pirates. He believed that the President had force enough now. But five sloops of war at once was surely enough. Let us leave some to be provided by our successors.

The question was then put on Mr. BUCHANAN's amendment, and carried—yes, 78, noes 57.

The committee then rose, and reported the bill as amended.

The House concurred in all the amendments of the committee, saving the last, viz: that reducing the number of sloops, and the sum to be appropriated.

The bill having received its third reading, and the question being on its final passage,

Mr. ROSS, of Ohio, spoke in earnest opposition to it. The question had now become this: Whether we will increase the navy of the United States? The bill was no longer a provision against piracy, but a bill for the increase of the navy. If vessels of the kind proposed were needed, he thought we had enough of them already. We had twelve or thirteen schooners, a kind of vessel very similar to those now to be built, as well calculated for the purpose intended as these sloops of war; and the debate came back to the simple question, whether this House will grant an appropriation for the general increase of the navy? and not for any specific

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*Indian Title to Lands west of the Rocky Mountains.*

[H. OF R.]

purpose. He wished to turn the attention of the House to the expense unavoidably attendant on such a measure. He thought that, when that expense was duly considered, gentlemen would feel inclined to pause, and would endeavor to be better satisfied of the necessity of the expense before they passed this bill. It was not to be disguised, that the argument which had prevailed thus far with the House was based on the necessity of building these vessels for the avowed purpose of putting down piracy. This, however, was now discarded and thrown quite out of view, and we were to build these sloops of war to increase our naval force. It appeared, from the estimates, that each of these vessels will cost 85,000 dollars. If ten of them are built, they will cost 850,000 dollars. The contingent expenses of one of these ships are 61,000 dollars; for the ten, it will be 610,000 dollars. The interest of the cost, together with this contingent expense, will cost the nation upwards of 1,000,000 dollars annually; and this expense is to be permanent so long as these vessels continue in service. We are called upon to do this directly in the face of the law of 1821-'22. We are called upon to alter the policy we then established, and appropriate 1,400,000 dollars, instead of the small sum which we then determined should be appropriated for the increase of the navy. If it was necessary then to reduce our expenses, Mr. R. was by no means convinced that it was as necessary now why we should add the difference between 500,000 and 1,400,000 to the national burden. The vessels we purchased before are still in existence, and our seaports are lined with officers. The bill had indeed been trimmed down, but he was still opposed to it as unnecessary and extravagant.

Mr. COOK, of Illinois, followed on the opposite side. He said it might be thought, that as he represented that State, which was the furthest of any from the ocean, he neither knew nor cared much about a bill which related wholly to naval affairs; but if any gentleman had drawn that conclusion, they had misunderstood him, and misunderstood the West. The Western country knows and feels that it is dependent for its prosperity, to a very great extent, on the owners of our shipping. It is through them that the trade of the interior gets an outlet to the ocean, and it has experienced the vast advantage which has been conferred by the navy on the security and advancement of the commerce of the country. The West has an extensive interest in enjoying a market for its product. In the present state of the country, the only market for a very large portion of the interior, is found at New Orleans; and the Western States have, therefore, a direct concern in the protection of the trade in the Gulf of Mexico, from those vile marauders, who have so long vexed and harassed it.

Mr. WOOD, of New York, observed, in reply to Mr. ROSS, that that gentleman was mistaken in supposing that this bill was at war with the

principles of economy. On the contrary, experience had proved, that there was no class of vessels so cheap as that now proposed; the plan of the bill was eminently an economical plan. The expense of a 74 gun ship was five times as great as that of a sloop of war. Allowing one of the latter to cost \$70,000, five of them will cost \$350,000, but one 74 costs \$370,000. These sloops, while costing less than a 74, employ at the same time, 200 more men. There was no comparison as to the efficiency of the two kinds of vessels in time of peace. Our 74s, as such, are now in a great measure useless. They are employed only for the want of smaller vessels. Sloops of war employ more men and more officers. They afford a desirable opportunity of making our midshipmen into masters, and furnish the best and only effectual means to train up officers for the navy service. It is in vain you give them education in a school, of however excellent a kind; a naval officer must be a sailor, or he is utterly inefficient. If Congress mean to make the navy an effectual arm of defence, they must provide it with officers who have not only theory, but practice. To this end, the plan of the present bill is the most efficient, while it is the most economical.

Mr. NEWTON, of Virginia, supported the bill. If the House should now reject it, it was too late to originate a new one, and the commerce of the country would be left to the depredation of the pirates to the next session. A state of things which would cost the nation fifty times as much as the whole amount of the bill.

[The Senate subsequently concurred in all the amendments made to the House by this bill.]

On motion of Mr. SCOTT, the House went into Committee of the Whole, (Mr. HERRICK in the chair,) on the bill authorizing the President of the United States to cause a road to be marked out from Missouri to the confines of New Mexico; it was reported without amendment.

Mr. McDUFFIE objected to the bill, as being for External Improvement, and moved that it lie on the table. The motion was carried—Ayes 68, Noes 48.

WEDNESDAY, March 2.

Mr. TUCKER offered the following, which lies on the table:

"Resolved, That the Secretary of War be required to ascertain the probable expense of extinguishing the Indian title to a portion of the country lying west of the Rocky Mountains, that may be suitable for colonizing the free people of color, the best known route across the said mountains, and the probable cost of a road and military posts necessary to a safe communication with such colony, and to report thereon to the House at the next session of Congress."

Mr. HAMILTON, of South Carolina, said he wished the gentleman would withdraw his motion, to give him an opportunity of expressing his sentiments on so extraordinary a proposition, on which there prevailed a distempered

enthusiasm, which ought, for the interest of the country, to be repressed.

The motion was not withdrawn, but, after some further remarks, the resolve was ordered to lie on the table.

The House then went into Committee of the Whole, on the bill concerning the Copper Mines on the south side of Lake Superior.

Mr. COOKE inquired for further information; and a letter from Mr. Schoolcraft, the Mineralogist, was read.

Mr. OWEN moved to strike out all of the bill after the enacting clause, and substitute the body of another bill for adjusting certain land claims.

The Chair pronounced the motion out of order.

Mr. COOKE then stated that he had just received information from the delegate from Michigan, which induced him to believe the Copper Mines in question were of great value—and that the longer the purchase was deferred, the more its price would be enhanced.

Mr. ELLIS opposed the bill. It was beneath the dignity of the Government, he said, to seize upon a feature of value in the Indian country the moment it was heard of, &c.

Mr. RANKIN deprecated the interference of the United States in mining property. The experience of the Government, in relation to lead mines and salt springs, afforded a warning on the subject. He moved to strike out the enacting clause.

Mr. RICHARD, Delegate from Michigan, stated the facts of the case. One vein of very pure ore had been discovered, of six feet in thickness, he said, and of great, and at present, unknown length. The value of this mine made it very important to legislate on the subject, &c.

Mr. CONWAY, the Delegate from Arkansas, corroborated this statement. Masses of copper had been found there, he said, weighing several hundred pounds. He replied to the remarks of Mr. RANKIN. The bill only looks to the extinguishment of Indian title to a small tract of country embracing the mine, which, if not worked by the Government, might be sold to great advantage.

Mr. WHIPPLE opposed the bill. He did not doubt the existence of quantities of copper there—but the transportation, &c., would make it cost more than that imported.

Mr. STRONG advocated the object of the bill. Its object was not to extinguish the Indian title to the tract, but to have the country thoroughly explored, and, if copper exists, as is represented, to get the right over it for the United States, by purchase.

Mr. McCOR opposed the bill. Mines were the last property, he said, for which he would vote away the public money.

Mr. WOOD stated facts, and quoted Long's Expedition, to show that the mine would be of no value till local commerce required copper in that neighborhood.

The question being put, the enacting clause of the bill was stricken out.

So the bill was rejected.

The bill from the Senate to authorize the President of the United States to cause a road to be marked out from the western frontier of Missouri to the confines of New Mexico, yesterday laid on the table, was again taken up.

Mr. McCOR moved to lay it again on the table. The motion was negatived—ayes 49, noes 79.

The bill was ordered to a third reading, read a third time, passed, and returned to the Senate.

#### *Evening Session—8 o'clock.*

Mr. CALL moved to take up the bill establishing a navy yard at or near Pensacola. The motion was agreed to—ayes 66, noes 44.

The House accordingly went into Committee of the Whole, Mr. TOMLINSON in the chair, on that bill.

A debate arose upon this bill, of considerable interest, in which Mr. CALL, WOOD of New York, CLAY, and TATTNALL, took part, in which the bill was supported with great earnestness by Mr. CALL and Mr. TATTNALL, and opposed by Mr. BARTLETT. On motion of Mr. WEBSTER, the bill was modified by an amendment, so as to authorize the Secretary of the Navy to locate the navy yard on any point in the Gulf of Mexico. In this form it was advocated by Mr. WOOD and Mr. CLAY, and having been reported, it was ordered to a third reading—and was subsequently read a third time, passed, and returned to the Senate for concurrence in the amendment.

#### THURSDAY, March 8.

Mr. FORSYTH laid upon the table the following resolution:

*Resolved*, That while this House anxiously desires that the slave trade should be universally denounced as piracy, and, as such, should be detected and punished under the law of nations, it considers that it would be highly inexpedient to enter into engagements with any foreign power, by which *all* the merchant vessels of the United States would be exposed to the inconveniences of any regulation of search from which any merchant vessels of that foreign power would be exempted."

The resolution lies on the table.

Mr. FORSYTH also offered the following:

*Resolved*, That the purchase of lands from the Indians occupying it in the State of Georgia, is a peaceable extinguishment of their title; and that a purchase should be made, if it can be effected on *reasonable terms*, although the residue of the tribes to which the said Indians may be attached should not join in the contract."

This resolution, also, was, on motion of the mover, ordered to lie on the table.

On motion of Mr. MARKLEY, of Pennsylvania, it was

*Resolved*, That the thanks of this House be presented to the Hon. HENRY CLAY, for the able, impartial, and dignified manner in which he has presided over its deliberations, and performed the ar-

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Adjournment.

[H. OF R.]

duous and unpleasant duties of the chair, during the present session of Congress."

A few minutes after this vote, Mr. OLAY, the Speaker, having resumed the chair, addressed the House as follows:

"GENTLEMEN: For the honorable testimony which you have been pleased this day to express to my official conduct in this highly distinguished station, I pray you to accept my profound acknowledgments. Near fourteen years, with but two comparatively short intervals, the arduous duties of the Chair have been assigned to me. In that long period, of peace and of war, causes from without and within, of great public excitement, have occasionally divided our councils, disturbed our harmony, and threatened our safety. Happily, however, past dangers, which appeared to encompass us, were dispelled, as I anxiously hope those of the present will be, in a spirit of mutual forbearance, moderation, and wisdom. The debates in this House, to which those causes gave rise, were sometimes ardent and animated; but, amidst all the heats and agitations produced by our temporary divisions, it has been my happy fortune to experience, in an unexampled degree, the kindness, the confidence, and the affectionate attachment of the members of the House. Of the numerous decisions which I have been called

upon to pronounce from this place, on questions often suddenly started, and of much difficulty, it has so happened, from the generous support given me, that not one of them has ever been reversed by the House. I advert to this fact, not in a vain spirit of exultation, but as furnishing a powerful motive for undissembled gratitude.

In retiring, perhaps forever, from a situation with which so large a portion of my life has been associated, I shall continually revert, during the remainder of it, with unceasing respect and gratitude, to this great theatre of our public action, and with the firm belief that the public interests and the liberty of our beloved country will be safely guarded hereafter, as they have been heretofore, by enlightened patriotism.

Gentlemen: In returning to your respective families and constituents, I beg all of you, without exception, to carry with you my fervent prayers for the continuation of your lives, your health, and your happiness."

Mr. TUCKER, of Virginia, called for the consideration of the resolve yesterday submitted by him, looking to the Colonization of the free people of color beyond the Rocky Mountains; which motion the House refused *now* to consider.

Soon after this the House adjourned *sine die*.

## NINETEENTH CONGRESS.—FIRST SESSION.

BEGUN AT THE CITY OF WASHINGTON, DECEMBER 5, 1825.

*Executive Government for the Tenth Presidential Term, commencing 4th March, 1825, and ending 4th March, 1828.*

JOHN QUINCY ADAMS, of Massachusetts, *President.*JOHN C. CALHOUN, of South Carolina, *Vice President.*

*Secretary of State.*—HENRY CLAY, of Kentucky. Nominated and confirmed 7th March, 1825.

*Secretary of the Treasury.*—RICHARD RUSH, of Pennsylvania. Nominated and confirmed 7th March, 1825.

*Secretary of War.*—JAMES BARBOUR, of Virginia. Nominated and confirmed 7th March, 1825.

*Secretary of the Navy.*—SAMUEL SOUTHARD, of

New Jersey. [Appointed during the Administration of Mr. Monroe.]

*Postmaster General.*—JOHN MCLEAN, of Ohio. [Appointed during the Administration of Mr. Monroe.]

*Attorney General.*—WILLIAM WIRT, of Virginia. [Appointed during the Administration of Mr. Madison.]

## PROCEEDINGS IN THE SENATE.\*

MONDAY, December 5.

Agreeably to the provision of the constitution, fixing the period for the meeting of Congress, the two Houses assembled in their respective Chambers, in the Capitol, this day, and commenced the First Session of the Nineteenth Congress.

At twelve o'clock, the VICE PRESIDENT OF THE UNITED STATES, *ex officio* PRESIDENT OF THE SENATE, took the chair, and called the Senate to order. The roll of the Members being then called over, it appeared that a quorum was present.

On motion, a committee was ordered to be appointed jointly with such committee as should be appointed by the House of Representatives, to wait on the President of the United States, and inform him that the two Houses of Congress are assembled, and ready to receive any communication he might have to make; and Mr. SMITH, of Maryland, and Mr. LLOYD, of Massachusetts, were appointed the committee on the part of the Senate.

The usual orders, for furnishing the Members with a certain number of newspapers, &c., were adopted, and

The Senate adjourned to 12 o'clock to-morrow.

TUESDAY, December 6.

Mr. SMITH, of Maryland, reported, from the Joint Committee, that they had waited on the President of the United States, agreeably to order, and that the President informed the committee that he would make a communication to the two Houses this day.

Soon after which,

A Message was received from the President of the United States, by the hands of Mr. J. Adams, Jun., his private Secretary; which was read, and 8,000 copies ordered to be printed, together with 1,500 of the accompanying documents.

*Message of the President.*

*Fellow-citizens of the Senate,  
and of the House of Representatives:*

In taking a general survey of the concerns of our beloved country, with reference to subjects interesting to the common welfare, the first sentiment which impresses itself upon the mind, is, of gratitude to the Omnipotent Disposer of all Good, for the continuance of the signal blessings of his Providence, and especially for that health which to an unusual extent, has prevailed within our borders; and for that abundance which, in the vicissitudes of the seasons, has been scattered, with profusion, over our land. Nor ought we less to ascribe to

## \* LIST OF MEMBERS OF THE SENATE.

*Maine.*—John Chandler, John Holmes.  
*New Hampshire.*—Samuel Bell, Levi Woodbury.  
*Massachusetts.*—James Lloyd, Elijah Hunt Mills.  
*Rhode Island.*—Nehemiah R. Knight, Asher Robbins.  
*Connecticut.*—Henry W. Edwards, Calvin Willey.  
*Vermont.*—Dudley Chase, Horatio Seymour.  
*New York.*—Martin Van Buren. [One vacancy.]  
*New Jersey.*—Mahlon Dickerson, Joseph McVaine.  
*Pennsylvania.*—William Findlay, William Marks.  
*Delaware.*—Nicholas Van Dyke, Thomas Clayton.  
*Maryland.*—Edward Lloyd, Samuel Smith.

*Virginia.*—Littleton W. Tazewell, John Randolph.  
*North Carolina.*—Nathaniel Macon, John Branch.  
*South Carolina.*—John Gaillard, Robert Y. Hayne.  
*Georgia.*—J. McPherson Berrien, Thomas W. Cobb.  
*Kentucky.*—Richard M. Johnson, John Rowan.  
*Tennessee.*—John Henry Eaton, Hugh L. White.  
*Ohio.*—Wm. H. Harrison, Benjamin Euggles.  
*Louisiana.*—Josiah S. Johnston, Dominique Bouligny.  
*Indiana.*—William Hendricks, James Noble.  
*Mississippi.*—Powhatan Ellis, Thomas H. Williams.  
*Illinois.*—Elias K. Kane, Jesse B. Thomas.  
*Alabama.*—Henry Chambers, William R. King.  
*Missouri.*—David Barton, Thomas H. Benton.

DECEMBER, 1835.]

*President's Message.*

[SENATE.]

Him the glory, that we are permitted to enjoy the bounties of his hand in peace and tranquillity—in peace with all the other nations of the earth, in tranquillity among ourselves. There has, indeed, rarely been a period in the history of civilized man, in which the general condition of the Christian nations has been marked so extensively by peace and prosperity.

Europe, with a few partial and unhappy exceptions, has enjoyed ten years of peace, during which all her Governments, whatever the theory of their constitutions may have been, are successively taught to feel that the end of their institution is the happiness of the people, and that the exercise of power among men can be justified only by the blessings it confers upon those over whom it is extended.

During the same period, our intercourse with all those nations has been pacific and friendly—it so continues. Since the close of your last session no material variation has occurred in our relations with any one of them. In the commercial and navigation system of Great Britain, important changes of municipal regulation have recently been sanctioned by acts of Parliament, the effect of which upon the interests of other nations, and particularly upon ours, has not yet been fully developed. In the recent renewal of the diplomatic missions on both sides, between the two Governments, assurances have been given and received of the continuance and increase of the mutual confidence and cordiality by which the adjustment of many points of difference had already been effected, and which affords the surest pledge for the ultimate satisfactory adjustment of those which still remain open, or may hereafter arise.

The policy of the United States, in their commercial intercourse with other nations, has always been of the most liberal character. In the mutual exchange of their respective productions, they have abstained altogether from prohibitions; they have interdicted themselves the power of laying taxes upon exports, and, whenever they have favored their own shipping, by special preferences, or exclusive privileges in their own ports, it has been only with a view to countervail similar favors and exclusions granted by the nations with whom we have been engaged in traffic, to their own people or shipping, and to the disadvantage of ours. Immediately after the close of the last war, a proposal was fairly made by the act of Congress of the 3d of March, 1815, to all the maritime nations, to lay aside the system of retaliating restrictions and exclusions, and to place the shipping of both parties to the common trade on a footing of equality, in respect to the duties of tonnage and impost. This offer was partially and successively accepted by Great Britain, Sweden, the Netherlands, the Hanseatic Cities, Prussia, Sardinia, the Duke of Oldenburg, and Russia. It was also adopted, under certain modifications, in our late commercial convention with France. And, by the act of Congress of the 8th January, 1824, it has received a new confirmation, with all the nations who had acceded to it, and has been offered again to all those who are, or may hereafter be, willing to abide in reciprocity by it. But all these regulations, whether established by treaty or by municipal enactments, are still subject to one important restriction. The removal of discriminating duties of tonnage and of impost, is limited to articles of the growth, produce, or manufacture, of the country to which the vessel

belongs, or to such articles as are most usually first shipped from her ports. It will deserve the serious consideration of Congress, whether even this remnant of restriction may not be safely abandoned, and whether the general tender of equal competition, made in the act of 8th January, 1824, may not be extended, to include all article of merchandise not prohibited, of what country soever they may be the produce or manufacture. Propositions to this effect have already been made to us by more than one European government, and it is probable, that, if once established by legislation or compact with any distinguished maritime state, it would recommend itself, by the experience of its advantages, to the general accession of all.

The Convention of Commerce and Navigation between the United States and France, concluded on the 24th of June, 1822, was, in the understanding and intent of both parties, as appears upon its face, only a temporary arrangement of the points of difference between them, of the most immediate and pressing urgency. It was limited, in the first instance, to two years, from the 1st of October, 1822, but with a proviso, that it should further continue in force till the conclusion of a general and definite treaty of commerce, unless terminated by a notice six months in advance, of either of the parties to the other. Its operation, so far as it extended, has been mutually advantageous; and it still continues in force by common consent. But it left unadjusted several objects of great interest to the citizens and subjects of both countries, and particularly a mass of claims, to considerable amount, of citizens of the United States upon the Government of France, of indemnity for property taken or destroyed under circumstances of the most aggravated and outrageous character. In the long period during which continual and earnest appeals have been made to the equity and magnanimity of France, in behalf of these claims, their justice has not been, as it could not be, denied. It was hoped that the accession of a new sovereign to the throne would have afforded a favorable opportunity for presenting them to the consideration of his Government. They have been presented and urged, hitherto, without effect. The repeated and earnest representations of our Minister at the Court of France, remain, as yet, even without an answer. Were the demands of nations upon the justice of each other susceptible of adjudication by the sentence of an impartial tribunal, those to which I now refer would long since have been settled, and adequate indemnity would have been obtained. There are large amounts of similar claims upon the Netherlands, Naples, and Denmark. For those upon Spain, prior to 1819, indemnity was, after many years of patient forbearance, obtained, and those upon Sweden have been lately compromised by a private settlement, in which the claimants themselves have acquiesced. The Governments of Denmark and of Naples have been recently reminded of those yet existing against them; nor will any of them be forgotten, while a hope may be indulged of obtaining justice, by the means within the constitutional power of the Executive, and without resorting to those measures of self-redress, which, as well as the time, circumstances, and occasions, which may require them, are within the exclusive competency of the Legislature.

It is with great satisfaction that I am enabled to bear witness to the liberal spirit with which the

Republic of Colombia has made satisfaction for well-established claims of a similar character. And among the documents, now communicated to Congress, will be distinguished a Treaty of Commerce and Navigation with that Republic; the ratifications of which have been exchanged since the last recess of the Legislature. The negotiation of similar treaties with all the independent South American States, has been contemplated, and may yet be accomplished. The basis of them all, as proposed by the United States, has been laid in two principles: the one, of entire and unqualified reciprocity; the other, the mutual obligation of the parties to place each other permanently upon the footing of the most favored nation. These principles are, indeed, indispensable to the effectual emancipation of the American hemisphere from the thralldom of colonizing monopolies and exclusions—an event rapidly realizing in the progress of human affairs, and which the resistance still opposed in certain parts of Europe to the acknowledgment of the Southern American Republics as independent States, will, it is believed, contribute more effectually to accomplish. The time has been, and that not remote, when some of those States might, in their anxious desire to obtain a nominal recognition, have accepted of a nominal independence, clogged with burdensome conditions, and exclusive commercial privileges, granted to the nation from which they have separated, to the disadvantage of all others. They are now all aware that such concessions to any European nation, would be incompatible with that independence which they have declared and maintained.

Among the measures which have been suggested to them by the new relations with one another, resulting from the recent changes of their condition, is that of assembling, at the Isthmus of Panama, a Congress at which each of them should be represented, to deliberate upon objects important to the welfare of all. The Republics of Colombia, of Mexico, and of Central America, have already deputed Plenipotentiaries to such a meeting, and they have invited the United States to be also represented there by their ministers. The invitation has been accepted, and ministers on the part of the United States will be commissioned to attend at those deliberations, and to take part in them, so far as may be compatible with that neutrality from which it is neither our intention, nor the desire of the other American States, that we should depart.

The Commissioners under the seventh article of the Treaty of Ghent, have so nearly completed their arduous labors, that, by the report recently received from the agent on the part of the United States, there is reason to expect that the commission will be closed at their next session, appointed for the 22d of May of the ensuing year.

The other commission, appointed to ascertain the indemnities due for slaves carried away from the United States, after the close of the late war, have met with some difficulty, which has delayed their progress in the inquiry. A reference has been made to the British Government on the subject, which, it may be hoped, will tend to hasten the decision of the Commissioners, or serve as a substitute for it.

Among the powers specifically granted to Congress by the constitution, are those of establishing uniform laws on the subject of bankruptcies throughout the United States, and of providing for organ-

izing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States. The magnitude and complexity of the interests affected by legislation upon these subjects, may account for the fact, that, long and often as both of them have occupied the attention, and animated the debates of Congress, no systems have yet been devised for fulfilling, to the satisfaction of the community, the duties prescribed by these grants of power. To conciliate the claim of the individual citizen to the enjoyment of personal liberty, with the effective obligation of private contracts, is the difficult problem to be solved by a law of bankruptcy. These are objects of the deepest interest to society; affecting all that is precious in the existence of multitudes of persons, many of them in the classes essentially dependent and helpless; of the age requiring nurture, and of the sex entitled to protection, from the free agency of the parent and the husband. The organization of the militia is yet more indispensable to the liberties of the country. It is only by an effective militia that we can at once enjoy the repose of peace, and bid defiance to foreign aggression; it is by the militia that we are constituted an armed nation, standing in perpetual panoply of defence, in the presence of all the other nations of the earth. To this end, it would be necessary, if possible, so to shape its organization as to give it a more united and active energy. There are laws for establishing a uniform militia, throughout the United States, and for arming and equipping its whole body; but it is a body of dislocated members, without the vigor of unity, and having little of uniformity but the name. To infuse into this most important institution the power of which it is susceptible, and to make it available for the defence of the Union, at the shortest notice, and at the smallest expense possible of time, of life, and of treasure, are among the benefits to be expected from the persevering deliberations of Congress.

Among the unequivocal indications of our national prosperity, is the flourishing state of our finances. The revenues of the present year, from all their principal sources, will exceed the anticipations of the last. The balance in the Treasury, on the first of January last, was a little short of two millions of dollars, exclusive of two millions and a half, being the moiety of the loan of five millions, authorized by the act of 26th May, 1824. The receipts into the Treasury, from the first of January to the 30th of September, exclusive of the other moiety of the same loan, are estimated at sixteen millions five hundred thousand dollars; and it is expected, that those of the current quarter will exceed five millions of dollars; forming an aggregate of receipts of nearly twenty-two millions, independent of the loan. The expenditures of the year will not exceed that sum more than two millions. By those expenditures, nearly eight millions of the principal of the public debt have been discharged. More than a million and a half has been devoted to the debt of gratitude to the warriors of the Revolution; a nearly equal sum to the construction of fortifications, and the acquisition of ordnance, and other permanent preparations of national defence; half a million to the gradual increase of the Navy; an equal sum for purchases of territory from the Indians, and payment of annuities to them; and upwards of a million for objects of internal improvement, authorized by special acts of the last Congress. If we add to

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these, four millions of dollars for payment of interest upon the public debt, there remains a sum of about seven millions, which have defrayed the whole expense of the administration of Government, in its Legislative, Executive, and Judiciary Departments, including the support of the military and naval establishments, and all the occasional contingencies of a Government co-extensive with the Union.

The amount of duties secured on merchandise imported since the commencement of the year, is about twenty-five millions and a half; and that which will accrue during the current quarter, is estimated at five millions and a half; from these thirty-one millions, deducting the drawbacks, estimated at less than seven millions, a sum exceeding twenty-four millions will constitute the revenue of the year; and will exceed the whole expenditures of the year. The entire amount of public debt remaining due on the first of January next, will be short of eighty-one millions of dollars.

By an act of Congress of the third of March last, a loan of twelve millions of dollars was authorized at four and a half per cent., or an exchange of stock to that amount of four and a half per cent. for a stock of six per cent., to create a fund for extinguishing an equal amount of the public debt, bearing an interest of six per cent., redeemable in 1826. An account of the measures taken to give effect to this act, will be laid before you by the Secretary of the Treasury. As the object which it had in view has been but partially accomplished, it will be for the consideration of Congress, whether the power with which it clothed the Executive should not be renewed at an early day of the present session, and under what modifications.

The act of Congress of the 3d of March last, directing the Secretary of the Treasury to subscribe, in the name and for the use of the United States, for one thousand five hundred shares of the capital stock of the Chesapeake and Delaware Canal Company, has been executed by the actual subscription for the amount specified; and such other measures have been adopted by that officer, under the act, as the fulfilment of its intentions requires. The latest accounts received of this important undertaking, authorize the belief that it is in successful progress.

The payments into the Treasury from proceeds of the sales of the public lands, during the present year, were estimated at one million of dollars. The actual receipts of the first two quarters have fallen very little short of that sum; it is not expected that the second half of the year will be equally productive; but the income of the year from that source may now be safely estimated at a million and a half. The act of Congress of 18th May, 1824, to provide for the extinguishment of the debt due to the United States by the purchasers of public lands, was limited, in its operation of relief to the purchaser, to the 10th of April last. Its effect at the end of the quarter during which it expired, was to reduce that debt from ten to seven millions. By the operation of similar prior laws of relief, from and since that of 2d of March, 1821, the debt had been reduced, from upwards of twenty-two millions, to ten. It is exceedingly desirable that it should be extinguished altogether; and to facilitate that consummation, I recommend to Congress the revival for one year more, of the act of eighteenth May, 1824, with such provisional modification as

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may be necessary to guard the public interests against fraudulent practices in the resale of the relinquished land. The purchasers of public lands are among the most useful of our fellow-citizens; and, since the system of sales for cash alone has been introduced, great indulgence has been justly extended to those who had previously purchased upon credit. The debt which had been contracted under the credit sales had become unwieldy, and its extinction was alike advantageous to the purchaser and the public. Under the system of sales, matured, as it has been, by experience, and adapted to the exigencies of the times, the lands will continue, as they have become, an abundant source of revenue; and when the pledge of them to the public creditor shall have been redeemed by the entire discharge of the national debt, the swelling tide of wealth with which they replenish the common Treasury may be made to reflow in unfailling streams of improvement from the Atlantic to the Pacific Ocean.

The condition of the various branches of the public service, resorting from the Department of War, and their administration during the current year, will be exhibited in the report of the Secretary of War, and the accompanying documents herewith communicated. The organization and discipline of the Army are effective and satisfactory. To counteract the prevalence of desertion among the troops, it has been suggested to withhold from the men a small portion of their monthly pay, until the period of their discharge; and some expedient appears to be necessary to preserve and maintain among the officers so much of the art of horsemanship as could scarcely fail to be found wanting, on the possible sudden eruption of a war, which should overtake us unprovided with a single corps of cavalry. The Military Academy at West Point, under the restrictions of a severe but paternal superintendence, recommends itself more and more to the patronage of the nation; and the number of meritorious officers which it forms and introduces to the public service, furnishes the means of multiplying the undertakings of public improvements to which their acquirements at that institution are peculiarly adapted. The school of Artillery Practice, established at Fortress Monroe, is well suited to the same purpose, and may need the aid of further legislative provision to the same end. The reports of the various officers at the head of the administrative branches of the military service, connected with the quartering, clothing, subsistence, health, and pay, of the Army, exhibit the assiduous vigilance of those officers in the performance of their respective duties, and the faithful accountability which has pervaded every part of the system.

Our relations with the numerous tribes of aboriginal natives of this country, scattered over its extensive surface, and so dependent, even for their existence, upon our power, have been, during the present year, highly interesting. An act of Congress, of 25th May, 1824, made an appropriation to defray the expenses of making treaties of trade and friendship with the Indian tribes beyond the Mississippi. An act of 3d March, 1825, authorized treaties to be made with the Indians for their consent to the making of a road from the frontier of Missouri to that of New Mexico. And another act, of the same date, provided for defraying the expenses of holding treaties with the Sioux, Chippe-



ways, Menomonies, Sauks, Foxes, &c., for the purpose of establishing boundaries and promoting peace between said tribes. The first and the last objects of these acts have been accomplished, and the second is yet in a process of execution. The treaties which, since the last session of Congress, have been concluded with the several tribes, will be laid before the Senate for their consideration, conformably to the constitution. They comprise large and valuable acquisitions of territory; and they secure an adjustment of boundaries, and give pledges of permanent peace between several tribes which had been long waging bloody wars against each other.

On the 12th of February last, a treaty was signed at the Indian Springs, between Commissioners appointed on the part of the United States, and certain chiefs and individuals of the Creek Nation of Indians, which was received at the Seat of Government only a very few days before the close of the last session of Congress and of the late Administration. The advice and consent of the Senate was given to it on the 3d of March, too late for it to receive the ratification of the then President of the United States; it was ratified on the 7th of March, under the unsuspecting impression that it had been negotiated in good faith, and in the confidence inspired by the recommendation of the Senate. The subsequent transactions in relation to this treaty, will form the subject of a separate Message.

The appropriations made by Congress, for public works, as well in the construction of fortifications, as for purposes of internal improvement, so far as they have been expended, have been faithfully applied. Their progress has been delayed by the want of suitable officers for superintending them. An increase of both the corps of Engineers, Military and Topographical, was recommended by my predecessor, at the last session of Congress. The reasons upon which that recommendation was founded, subsist in all their force, and have acquired additional urgency since that time. It may also be expedient to organize the Topographical Engineers into a corps similar to the present establishment of the corps of Engineers. The Military Academy at West Point will furnish from the Cadets annually graduated there, officers well qualified for carrying this measure into effect.

The Board of Engineers for Internal Improvement, appointed for carrying into execution the Act of Congress of 30th of April, 1824, "to procure the necessary surveys, plans, and estimates, on the subject of roads and canals," have been actively engaged in that service from the close of the last session of Congress. They have completed the surveys necessary for ascertaining the practicability of a canal from the Chesapeake Bay to the Ohio River, and are preparing a full report on that subject; which, when completed, will be laid before you. The same observation is to be made with regard to the two other objects of national importance upon which the Board have been occupied; namely, the accomplishment of a national road from this city to New Orleans, and the practicability of uniting the waters of Lake Memphramagog with Connecticut River, and the improvement of the navigation of that river. The surveys have been made, and are nearly completed. The report may be expected at an early period during the present session of Congress.

The Acts of Congress of the last session, relative

to the surveying, marking, or laying out, roads in the Territories of Florida, Arkansas, and Michigan, from Missouri to Mexico, and for the continuation of the Cumberland Road, are, some of them, fully executed, and others in the process of execution. Those for completing or commencing fortifications, have been delayed only so far as the Corps of Engineers has been inadequate to furnish officers for the necessary superintendence of the works. Under the act confirming the statutes of Virginia and Maryland, incorporating the Chesapeake and Ohio Canal Company, three Commissioners on the part of the United States have been appointed for opening books and receiving subscriptions, in concert with a like number of Commissioners appointed on the part of each of those States. A meeting of the Commissioners has been postponed, to await the definitive Report of the Board of Engineers. The light-houses and monuments for the safety of our commerce and mariners; the works for the security of Plymouth beach, and for the preservation of the islands in Boston harbor; have received the attention required by the laws relating to those objects respectively. The continuation of the Cumberland Road, the most important of them all, after surmounting no inconsiderable difficulty in fixing upon the direction of the road, has commenced under the most promising auspices, with the improvements of recent invention in the mode of construction, and with the advantage of a great reduction in the comparative cost of the work.

The operation of the laws relating to the Revolutionary pensioners, may deserve the renewed consideration of Congress. The act of 18th March, 1818, while it made provision for many meritorious and indigent citizens, who had served in the War of Independence, opened a door to numerous abuses and impositions. To remedy this, the act of 1st May, 1820, exacted proofs of absolute indigence, which many really in want were unable, and all, susceptible of that delicacy which is allied to many virtues, must be deeply reluctant to give. The result has been, that some among the least deserving have been retained, and some in whom the requisites both of worth and want were combined, have been stricken from the list. As the numbers of these venerable relics of an age gone by diminish; as the decays of body, mind, and estate, of those that survive, must, in the common course of nature, increase; should not a more liberal portion of indulgence be dealt out to them? May not the want, in most instances, be inferred from the demand, when the service can be duly proved; and may not the last days of human infirmity be spared the mortification of purchasing a pittance of relief only by the exposure of its own necessities? I submit to Congress the expediency either of providing for individual cases of this description by special enactment, or of revising the act of 1st May, 1820, with a view to mitigate the rigor of its exclusions, in favor of persons to whom charity now bestowed can scarcely discharge the debt of justice.

The portion of the Naval force of the Union in actual service, has been chiefly employed on three stations: the Mediterranean, the coasts of South America bordering on the Pacific Ocean, and the West Indies. An occasional cruiser has been sent to range along the African shores most polluted by the traffic of slaves; one armed vessel has been stationed on the coast of our eastern boundary, to cruise along the fishing grounds in Hudson's Bay,

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and on the coast of Labrador; and the first service of a new frigate has been performed in restoring to his native soil, and domestic enjoyments, the veteran hero whose youthful blood and treasure had freely flowed in the cause of our country's Independence, and whose whole life had been a series of services and sacrifices to the improvement of his fellow-men. The visit of General Lafayette, alike honorable to himself and to our country, closed, as it had commenced, with the most affecting testimonials of devoted attachment on his part, and of unbounded gratitude of this people to him in return. It will form, hereafter, a pleasing incident in the annals of our Union, giving to real history the intense interest of romance, and signally marking the unpurchasable tribute of a great nation's social affections to the disinterested champion of the liberties of human kind.

The constant maintenance of a small squadron in the Mediterranean, is a necessary substitute for the humiliating alternative of paying tribute for the security of our commerce in that sea, and for a precarious peace, at the mercy of every caprice of four Barbary States, by whom it was liable to be violated. An additional motive for keeping a respectable force stationed there at this time, is found in the maritime war raging between the Greeks and the Turks; and in which the neutral navigation of this Union is always in danger of outrage and depredation. A few instances have occurred of such depredations upon our merchant vessels by privateers or pirates wearing the Grecian flag, but without real authority from the Greek or any other Government. The heroic struggles of the Greeks themselves, in which our warmest sympathies as Freemen and Christians have been engaged, have continued to be maintained with vicissitudes of success adverse and favorable.

Similar motives have rendered expedient the keeping of a like force on the coasts of Peru and Chili on the Pacific. The irregular and convulsive character of the war upon the shores, has been extended to the conflicts upon the ocean. An active warfare has been kept up for years, with alternate success, though generally to the advantage of the American patriots. But their naval forces have not always been under the control of their own Governments. Blockades, unjustifiable upon any acknowledged principles of international law, have been proclaimed by officers in command; and though disavowed by the supreme authorities, the protection of our own commerce against them has been made cause of complaint and of erroneous imputations against some of the most gallant officers of our navy. Complaints equally groundless have been made by the commanders of the Spanish Royal forces in those seas; but the most effective protection to our commerce has been the flag, and the firmness of our own commanding officers. The cessation of the war, by the complete triumph of the patriot cause, has removed, it is hoped, all cause of dissension with one party, and all vestige of force of the other. But an unsettled coast of many degrees of latitude, forming a part of our own Territory, and a flourishing commerce and fishery, extending to the islands of the Pacific and to China, still require that the protecting power of the Union should be displayed under its flag as well upon the ocean as upon the land.

The objects of the West India squadron have been to carry into execution the laws for the sup-

pression of the African slave trade: for the protection of our commerce against vessels of piratical character, though bearing commissions from either of the belligerent parties: for its protection against open and unequivocal pirates. These objects, during the present year, have been accomplished more effectually than at any former period. The African slave trade has long been excluded from the use of our flag; and if some few citizens of our country have continued to set the laws of the Union, as well as those of nature and humanity, at defiance, by persevering in that abominable traffic, it has been only by sheltering themselves under the banners of other nations, less earnest for the total extinction of the trade than ours. The irregular privateers have, within the last year, been in a great measure banished from those seas; and the pirates, for months past, appear to have been almost entirely swept away from the borders and the shores of the two Spanish islands in those regions. The active, persevering, and unremitted energy of Captain Warrington, and of the officers and men under his command, on that trying and perilous service, have been crowned with signal success, and are entitled to the approbation of their country. But experience has shown, that not even a temporary suspension or relaxation from assiduity can be indulged on that station, without reproducing piracy and murder in all their horrors; nor is it probable that, for years to come, our immensely valuable commerce in those seas can navigate in security, without the steady continuance of an armed force devoted to its protection.

It were indeed a vain and dangerous illusion to believe, that, in the present or probable condition of human society, a commerce so extensive and so rich as ours could exist and be pursued in safety, without the continual support of a military marine—the only arm by which the power of this Confederacy can be estimated or felt by foreign nations, and the only standing military force which can never be dangerous to our own liberties at home. A permanent naval peace establishment, therefore, adapted to our present condition, and adaptable to that gigantic growth with which the nation is advancing in its career, is among the subjects which have already occupied the foresight of the last Congress, and which will deserve your serious deliberations. Our navy, commenced at an early period of our present political organization, upon a scale commensurate with the incipient energies, the scanty resources, and the comparative indigence of our infancy, was even then found adequate to cope with all the powers of Barbary, save the first, and with one of the principal maritime powers of Europe. At a period of further advancement, but with little accession of strength, it not only sustained with honor the most unequal of conflicts, but covered itself and our country with unfading glory. But it is only since the close of the late war, that, by the number and force of the ships of which it was composed, it could deserve the name of a navy. Yet it retains nearly the same organization as when it consisted only of five frigates. The rules and regulations by which it is governed, earnestly call for revision, and the want of a Naval School of Instruction, corresponding with the Military Academy at West Point, for the formation of scientific and accomplished officers, is felt with daily increasing aggravation.

The act of Congress of 26th May, 1824, authorizes

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ing an examination and survey of the harbor of Charleston, in South Carolina, of St. Mary's, in Georgia, and of the Coast of Florida, and for other purposes, has been executed so far as the appropriation would admit. Those of the 8d of March last, authorizing the establishment of a navy yard and depôt on the coast of Florida, in the Gulf of Mexico, and authorizing the building of ten sloops of war, and for other purposes, are in the course of execution: for the particulars of which, and other objects connected with this Department, I refer to the Report of the Secretary of the Navy, herewith communicated.

A Report from the Postmaster General is also submitted, exhibiting the present flourishing condition of that Department. For the first time for many years, the receipts for the year ending on the 1st of July last, exceeded the expenditures during the same period, to the amount of more than forty-five thousand dollars. Other facts, equally creditable to the administration of this Department, are, that, in two years from the 1st of July, 1823, an improvement of more than one hundred and eighty-five thousand dollars in its pecuniary affairs, has been realized; that in the same interval the increase of the transportation of the mail has exceeded one million five hundred thousand miles, annually; and that one thousand and forty new post-offices have been established. It hence appears, that, under judicious management, the income from this establishment may be relied on as fully adequate to defray its expenses; and that, by the discontinuance of post-roads, altogether unproductive, others of more useful character may be opened till the circulation of the mail shall keep pace with the spread of our population, and the comforts of friendly correspondence, the exchanges of internal traffic, and the lights of the periodical press, shall be distributed to the remotest corners of the Union, at a charge scarcely perceptible to any individual, and without the cost of a dollar to the public treasury.

Upon this first occasion of addressing the Legislature of the Union, with which I have been honored, in presenting to their view the execution, so far as it has been effected, of the measures sanctioned by them, for promoting the internal improvement of our country, I cannot close the communication without recommending to their calm and persevering consideration the general principle in a more enlarged extent. The great object of the institution of civil government, is the improvement of the condition of those who are parties to the social compact. And no government, in whatever form constituted, can accomplish the lawful ends of its institution, but in proportion as it improves the condition of those over whom it is established. Roads and canals, by multiplying and facilitating the communications and intercourse between distant regions, and multitudes of men, are among the most important means of improvement. But moral, political, intellectual improvement, are duties assigned, by the Author of our existence, to social, no less than to individual man. For the fulfilment of those duties, governments are invested with power; and, to the attainment of the end, the progressive improvement of the condition of the governed; the exercise of delegated power, is a duty as sacred and indispensable, as the usurpation of power not granted, is criminal and odious. Among the first, perhaps the very first instrument for the im-

provement of the condition of men, is knowledge; and to the acquisition of much of the knowledge adapted to the wants, the comforts, and enjoyments of human life, public institutions, and seminaries of learning, are essential. So convinced of this was the first of my predecessors in this office, now first in the memory, as, living, he was first in the hearts of our country, that, once and again, in his addresses to the Congresses with whom he co-operated in the public service, he earnestly recommended the establishment of Seminaries of Learning, to prepare for all the emergencies of peace and war—a national university and a military academy. With respect to the latter, had he lived to the present day, in turning his eyes to the institution at West Point, he would have enjoyed the gratification of his most earnest wishes. But, in surveying the city which has been honored with his name, he would have seen the spot of earth which he had destined and bequeathed to the use and benefit of his country, as the site for a university, still bare and barren.

In assuming her station among the civilized nations of the earth, it would seem that our country had contracted the engagement to contribute her share of mind, of labor, and of expense, to the improvement of those parts of knowledge which lie beyond the reach of individual acquisition; and particularly, to geographical and astronomical science. Looking back to the history only of the half century since the Declaration of our Independence, and observing the generous emulation with which the Governments of France, Great Britain, and Russia, have devoted the genius, the intelligence, the treasures of their respective nations, to the common improvement of the species in these branches of science, is it not incumbent upon us to inquire, whether we are not bound, by obligations of a high and honorable character, to contribute our portion of energy and exertion to the common stock? The voyages of discovery, prosecuted in the course of that time, at the expense of those nations, have not only redounded to their glory, but to the improvement of human knowledge. We have been partakers of that improvement, and owe for it a sacred debt, not only of gratitude, but of equal or proportional exertion in the same common cause. Of the cost of these undertakings, if the mere expenditures of outfit, equipment, and completion of the expeditions, were to be considered the only charges, it would be unworthy of a great and generous nation to take a second thought. One hundred expeditions of circumnavigation, like those of Cook and La Perouse, would not burden the exchequer of the nation fitting them out, so much as the ways and means of defraying a single campaign in war. But, if we take into the account the lives of those benefactors of mankind, of which their services in the cause of their species were the purchase, how shall the cost of those heroic enterprises be estimated? And what compensation can be made to them, or to their countries, for them? Is it not by bearing them in affectionate remembrance? Is it not still more by imitating their example? by enabling countrymen of our own to pursue the same career, and to hazard their lives in the same cause?

In inviting the attention of Congress to the subject of internal improvements, upon a view thus enlarged, it is not my design to recommend the equipment of an expedition for circumnavigating the globe for purposes of scientific research and in-

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*President's Message.*

[SENATE.]

quity. We have objects of useful investigation nearer home, and to which our cares may be more beneficially applied. The interior of our own territories has yet been very imperfectly explored. Our coasts, along many degrees of latitude upon the shores of the Pacific Ocean, though much frequented by our spirited commercial navigators, have been rarely visited by our public ships. The river of the West, first fully discovered and navigated by a countryman of our own, still bears the name of the ship in which he ascended its waters, and claims the protection of our armed national flag at its mouth. With the establishment of a military post there, or at some other point of that coast, recommended by my predecessor, and already matured, in the deliberations of the last Congress, I would suggest the expediency of connecting the equipment of a public ship for the exploration of the whole Northwest coast of this continent.

The establishment of a uniform standard of Weights and Measures, was one of the specific objects contemplated in the formation of our constitution; and to fix that standard, was one of the powers delegated by express terms, in that instrument, to Congress. The Governments of Great Britain and France have scarcely ceased to be occupied with inquiries and speculations on the same subject, since the existence of our constitution, and with them it has expanded into profound, laborious, and expensive researches into the figure of the earth, and the comparative length of the pendulum vibrating seconds in various latitudes, from the Equator to the Pole. These researches have resulted in the composition and publication of several works highly interesting to the cause of science. The experiments are yet in the process of performance. Some of them have recently been made on our own shores, within the walls of one of our own colleges, and partly by one of our own fellow-citizens. It would be honorable to our country if the sequel of the same experiments should be countenanced by the patronage of our Government, as they have hitherto been by those of France and Britain.

Connected with the establishment of a University, or separate from it, might be undertaken the erection of an astronomical observatory, with provision for the support of an astronomer, to be in constant attendance of observation upon the phenomena of the heavens; and for the periodical publication of his observations. It is with no feeling of pride, as an American, that the remark may be made, that, on the comparatively small territorial surface of Europe, there are existing upwards of one hundred and thirty of these light-houses of the skies; while, throughout the whole American hemisphere, there is not one. If we reflect a moment upon the discoveries, which, in the last four centuries, have been made in the physical constitution of the universe, by the means of these buildings, and of observers stationed in them, shall we doubt of their usefulness to every nation? And while scarcely a year passes over our heads without bringing some new astronomical discovery to light, which we must fain receive at second hand from Europe, are we not cutting ourselves off from the means of returning light for light, while we have neither observatory nor observer upon our half of the globe, and the earth revolves in perpetual darkness to our unsearching eyes?

When, on the 25th October, 1791, the first President of the United States announced to Congress

the result of the first enumeration of the inhabitants of this Union, he informed them that the returns gave the pleasing assurance that the population of the United States bordered on four millions of persons. At the distance of thirty years from that time, the last enumeration, five years since completed, presented a population bordering upon ten millions. Perhaps, of all the evidences of a prosperous and happy condition of human society, the rapidity of the increase of population is the most unequivocal. But the demonstration of our prosperity rests not alone upon this indication. Our commerce, our wealth, and the extent of our territories, have increased in corresponding proportions; and the number of independent communities associated in our Federal Union, has, since that time, nearly doubled. The legislative representation of the States and people, in the two Houses of Congress, has grown with the growth of their constituent bodies. The House, which then consisted of sixty-five members, now numbers upwards of two hundred. The Senate, which consisted of twenty-six members, has now forty-eight. But the Executive, and still more the Judiciary Departments, are yet in a great measure confined to their primitive organization, and are now not adequate to the urgent wants of a still growing community.

The naval armaments, which, at an early period, forced themselves upon the necessities of the Union, soon led to the establishment of a Department of the Navy. But the Departments of Foreign Affairs, and of the Interior, which, early after the formation of the Government, had been united in one, continue so united at this time, to the unquestionable detriment of the public service. The multiplication of our relations with the nations and Governments of the old world, has kept pace with that of our population and commerce, while, within the last ten years, a new family of nations, in our own hemisphere, has arisen among the inhabitants of the earth, with whom our intercourse, commercial and political, would, of itself, furnish occupation to an active and industrious Department. The constitution of the Judiciary, experimental and imperfect as it was, even in the infancy of our existing Government, is yet more inadequate to the administration of national justice at our present maturity. Nine years have elapsed since a predecessor in this office, now not the last, the citizen who, perhaps, of all others throughout the Union, contributed most to the formation and establishment of our constitution, in his valedictory address to Congress, immediately preceding his retirement from public life, urgently recommended the revision of the Judiciary, and the establishment of an additional Executive Department. The exigencies of the public service, and its unavoidable deficiencies, as now in exercise, have added yearly cumulative weight to the considerations presented by him as persuasive to the measure; and in recommending it to your deliberations, I am happy to have the influence of his high authority, in aid of the undoubting convictions of my own experience.

The laws relating to the administration of the Patent Office, are deserving of much consideration, and, perhaps, susceptible of some improvement. The grant of power to regulate the action of Congress on this subject, has specified both the end to be obtained, and the means by which it is to be effected—to promote the progress of science and

useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries. If an honest pride might be indulged in the reflection that, on the records of that office, are already found inventions, the usefulness of which has scarcely been transcended in the annals of human ingenuity, would not its exultation be allayed by the inquiry, whether the laws have effectively insured to the inventors the reward destined to them by the constitution—even a limited term of exclusive right to their discoveries?

On the 24th of December, 1799, it was resolved by Congress that a marble monument should be erected by the United States in the Capitol, at the city of Washington; that the family of General Washington should be requested to permit his body to be deposited under it; and that the monument be so designed as to commemorate the great events of his military and political life. In reminding Congress of this resolution, and that the monument contemplated by it remains yet without execution, I shall indulge only the remarks, that the works at the Capitol are approaching to completion; that the consent of the family, desired by the resolution, was requested and obtained; that a monument has been recently erected in this city, over the remains of another distinguished patriot of the Revolution; and that a spot has been reserved within the walls where you are deliberating for the benefit of this and future ages, in which the mortal remains may be deposited of him whose spirit hovers over you, and listens, with delight, to every act of the Representatives of his nation which can tend to exalt and adorn his and their country.

The constitution under which you are assembled is a charter of limited powers. After full and solemn deliberation upon all or any of the objects, which, urged by an irresistible sense of my own duty, I have recommended to your attention, should you come to the conclusion, that, however desirable in themselves, the enactment of laws for effecting them, would transcend the powers committed to you by that venerable instrument which we are all bound to support; let no consideration induce you to assume the exercise of powers not granted to you by the people. But, if the power to exercise exclusive legislation in all cases whatsoever over the District of Columbia; if the power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States; if the power to regulate commerce with foreign nations and among the several States, and with the Indian tribes; to fix the standard of weights and measures; to establish post offices and post roads; to declare war; to raise and support armies; to provide and maintain a navy; to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and to make all laws which shall be necessary and proper for carrying these powers into execution. If these powers, and others enumerated in the constitution, may be effectually brought into action by laws promoting the improvement of agriculture, commerce, and manufactures, the cultivation and encouragement of the mechanic and of the elegant arts, the advancement of literature, and the progress of the sciences, ornamental and profound,—to refrain from exercising them for the benefit of the people them-

selves, would be to hide in the earth the talent committed to our charge—would be treachery to the most sacred of trusts.

The spirit of improvement is abroad upon the earth. It stimulates the heart, and sharpens the faculties, not of our fellow-citizens alone, but of the nations of Europe, and of their rulers. While dwelling with pleasing satisfaction upon the superior excellence of our political institutions, let us not be unmindful that liberty is power, that the nation blessed with the largest portion of liberty, must, in proportion to its numbers, be the most powerful nation upon earth; and that the tenure of power by man, is, in the moral purposes of his Creator, upon condition that it shall be exercised to ends of beneficence, to improve the condition of himself and his fellow-men. While foreign nations, less blessed with that freedom which is power, than ourselves, are advancing with gigantic strides in the career of public improvement; were we to slumber in indolence, or fold up our arms and proclaim to the world that we are palsied, by the will of our constituents, would it not be to cast away the bounties of Providence, and doom ourselves to perpetual inferiority? In the course of the year now drawing to its close, we have beheld, under the auspices, and at the expense of one State of this Union, a new University unfolding its portals to the sons of Science, and holding up the torch of human improvement to eyes that seek the light. We have seen, under the persevering and enlightened enterprise of another State, the waters of our Western Lakes mingled with those of the Ocean. If undertakings like these have been accomplished in the compass of a few years, by the authority of single members of our Confederation, can we, the Representative authorities of the whole Union, fall behind our fellow-servants in the exercise of the trust committed to us for the benefit of our common sovereign, by the accomplishment of works important to the whole, and to which neither the authority nor the resources of any one State can be adequate?

Finally, fellow-citizens, I shall await with cheering hope, and faithful co-operation, the result of your deliberations; assured that, without encroaching upon the powers reserved to the authorities of the respective States, or to the people, you will, with a due sense of your obligations to your country, and of the high responsibilities weighing upon yourselves, give efficacy to the means committed to you for the common good. And may He who searches the hearts of the children of men, prosper your exertions to secure the blessings of peace, and promote the highest welfare of our country.

JOHN QUINCY ADAMS.

WASHINGTON, December 6, 1825.

WEDNESDAY, December 7.

Committee on Agriculture.

The Senate then proceeded to the consideration of the following resolution, submitted by Mr. FINDLAY:

"Resolved, That the 30th rule of the Senate be amended, by adding thereto 'a Committee on Agriculture.'"

Mr. FINDLAY said, that, when he brought forward the subject on a former day, it was urged in opposition, that the subject of Agri-

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*Imprisonment for Debt.*

[SENATE.]

culture was not within the scope of that body, and that they could not, therefore, legislate respecting it beyond the District of Columbia. Mr. F. said it was his opinion, that the three great branches of domestic industry, Commerce, Manufactures, and Agriculture, were all equally entitled to the care and protection of the Government. The Senate had directed the establishment of a Committee on Manufactures as well as on Commerce, and he saw no reason why agriculture should not receive the same attention from the Senate. It might be alleged, that the connection between commerce and agriculture rendered a committee on the latter subject unnecessary. To this position he thought there might be exceptions. In legislating on commerce, certain laws might be passed, which might operate to the depression of agriculture; laws encouraging to a great extent the importation of articles in a raw state, which might come in competition with the home materials which agriculture furnished in abundance. Things could not be in this state without the agriculturists having a right to complain, and all their complaints would amount to nothing at all, if there were no committee to which their petitions could be referred. All subjects coming before the Senate that might particularly interfere with the interests of agriculture, ought to be referred to such a committee, who would report a modification of the laws, or suggest new ones. Mr. F. concluded by saying, he had submitted this resolution from the dictates of duty, and he did not think it necessary to say any thing further on the subject.

Mr. HOLMES, of Maine, wished very much that the gentleman from Pennsylvania had informed them what such a committee would have to do. Could any of them know what its duties would consist in? Could he point out any one thing it could report upon; any thing relating to the raising of cotton or of cattle? What power would the committee have? Was it to afford information to the people on the subject of agriculture, or to bring in reports on which Congress was to act? Mr. H. said he was opposed to the appointment of a committee of information; but, if the gentleman would point out any one thing which properly belonged to such a committee, or show how the committee was to act, he did not know but he should be disposed to indulge him with his vote; but he confessed he could, himself, think of no one thing: it was, perhaps, owing to his want of understanding on the subject, but he could not see what the committee would have to do. If he were one of that committee, and that gentleman were the chairman, and could give no further information on the subject than he had now done to the Senate, he should, certainly, be greatly at a loss what to do.

The question was then taken on the resolution of Mr. FINDLAY, and decided by yeas and nays, as follows:

YEAS.—Messrs. Barton, Bell, Benton, Chase,

Dickerson, Edwards, Findlay, Hayne, Hendricks, Johnson of Kentucky, Johnston of Louisiana, Kane, Knight, Marks, Noble, Robbins, Ruggles, Seymour, Smith, Thomas, Willey, and Woodbury—22.

NAYS.—Messrs. Branch, Chandler, Clayton, Cobb, Eaton, Gaillard, Harrison, Holmes of Maine, King of Alabama, Macon, Mills, Rowan, Van Buren, and Van Dyke—14.

So the resolution was agreed to.

#### *Imprisonment for Debt.*

The Senate then proceeded to consider the following resolution, submitted on Wednesday last, by Mr. JOHNSON, of Kentucky:

"Resolved, That a committee be appointed to inquire into the expediency of abolishing imprisonment for debt."

Mr. MILLS, of Massachusetts, said this was a subject which had occupied much of the time and attention of the Senate, and he should be glad to have it thoroughly examined, that some course might be adopted, some proposition made, which should meet with the approbation of a majority of the Senate. But he was opposed to the appointment of a Select Committee at the present time for that purpose. Amongst the great variety of subjects in the President's Message, Mr. M. said, there was one he had recommended—and he thanked him for it—the establishment of a uniform system of bankruptcy in the United States, in pursuance of the express delegation of that power to Congress by the constitution; and it was easy to see that it was a subject connected with the proposition now brought forward; and, whenever they exercised that power, all the evils, of which there was so much complaint, would be effectually remedied. As soon as the Standing Committees were appointed, that part of the Message which related to the subject of bankruptcy would be referred to one of them, probably the Committee on the Judiciary, and, when it was so referred, that committee would then have before it the very subject to which the gentleman now wished to call the attention of the Senate, and for which he wished the appointment of a Select Committee. Mr. M. was of opinion that, where two subjects were so intimately blended together, that they could not legislate on one without involving the other, both ought to be referred to the same committee. In digesting and preparing an act to establish a uniform system of bankruptcy throughout the United States, the subject embraced by this resolution would come before that committee. He hoped, therefore, the gentleman would permit his resolution to lie on the table till the Standing Committees of that House were appointed, and it would then be referred to one of them, under whose examination it would more immediately come.

Mr. JOHNSON said, it was the good fortune of his friend from Massachusetts, to have a Presidential recommendation in behalf of his favorite measure to satisfy his mind. But, for himself, Mr. J. said, he was obliged to bring forward his favorite project in the same manner,

and ask for it the same course that it had taken the two preceding sessions. He had not opposed the proposition for a bankrupt law; but, if he had that subject not so much at heart as the measure he had now, for the third time, presented to the Senate, he hoped he should be pardoned for asking an opportunity of bringing it forward. He said this was the third time he had introduced this proposition. The first session, the bill for abolishing imprisonment for debt, passed this body, but unfortunately it was at the close of the session, and, like every thing which at that period goes from one House to the other, it was swallowed up and ingulfed, for want of time, with the other unfinished business of both Houses. That was the fate of the bill the Senate acted on; and, last session, when he again introduced the subject, he was unsuccessful. Mr. J. said there was not a member of the community who would deny the isolated proposition for which he contended, that imprisonment for debt ought to be abolished; yet, for want of perfection in the details, it was, last session, lost by the casting vote of the presiding officer. He denied, most unequivocally, that this subject was embraced in that of a uniform system of bankruptcy; he denied that it had ever been embraced in any system here or in Great Britain, or in any other proposition made here by a standing committee, and, if his life were spared, he should submit it annually as long as he had the honor of a seat on that floor, although, out of respect to his associates, he should never complain of the result, if he failed, but content himself with having discharged his duty to God, his country, and his conscience.

Mr. MAOON observed, that, to his mind, there was a clear distinction between the measure proposed by the resolution and a bankrupt law. A law to abolish imprisonment for debt would apply to all honest debtors of whatever class, or vocation; whereas a bankrupt law would apply to a few comparatively, as he understood that bankrupt laws embraced merchants only; the latter were also highly penal, and if a fraudulent bankrupt was caught, he would be severely punished. [Hanged, said Mr. MILLS, in an under voice.] The gentleman from Massachusetts says, hang him. I did not know, sir, that the people in this part of the country were so fond of hanging; but I confess I prefer relieving debtors, honest ones, by the mode proposed by the gentleman from Kentucky, and shall vote for his resolution.

Mr. HAYNE, of South Carolina, said he had that morning the honor of submitting a resolution on the subject of bankruptcies; in so doing, his object was not to call for the immediate decision of the Senate on that proposition, but to refer it to some committee, when they shall have been appointed. He should be particularly desirous, if the gentleman from Kentucky (Mr. JOHNSON) should obtain his Select Committee, with a view of considering the subject in all its bearings, to ascertain how far

process in the courts of the United States might be modified, and how far general relief might be extended throughout the Union; that the committee, viewing the whole of the subject, might present the result of their deliberations to the Senate. He should still maintain his resolution, and if the gentleman from Kentucky should succeed in his proposition, he intended to move, at the proper time, to refer it to that committee. He was not disposed to object to that proposition, and he hoped that, in the spirit of mutual accommodation, he would not object to the suggestion which he now made. The proposition of the gentleman from Kentucky, Mr. H. said, would afford relief to unfortunate debtors of a particular class, for that bill never did propose to extend it beyond the courts of the United States. The relief afforded would, therefore, only be as one in a hundred; but a mild and judicious bankrupt law would not be confined to this class, but its benefits would be extended to every class throughout the Union.

Mr. MILLS then moved to postpone the further consideration of the subject to Tuesday next, which, after a few remarks from Mr. JOHNSON, of Kentucky, was agreed to.

The Senate adjourned to Monday.

#### MONDAY, December 12.

This day was principally occupied in the election of Officers of the Senate. After several ballottings, WALTER LOWRIE, of Pennsylvania, (late a member of this body,) was chosen Secretary. MOUNTJOY BAILEY was chosen Sergeant-at-Arms, and HENRY TIMS Doorkeeper. The Rev. Dr. STAUGHTON was chosen Chaplain to the Senate.

#### TUESDAY, December 13.

##### *Judicial Proceedings.*

The Senate then proceeded to the consideration of the following resolution, submitted yesterday, by Mr. KANE, of Illinois:

*Resolved*, That the Committee on the Judiciary be instructed to inquire into the expediency of so amending the acts of Congress regulating processes in the courts of the United States, as to place the persons and property (with regard to the proceedings against them) of citizens of the States admitted into the Union since the 29th of September, 1789, upon a footing of equal security with the persons and property of citizens of the original States."

Mr. HOLMES, of Maine, said he should be much gratified if the honorable gentleman who had moved the resolution would briefly state his object in making the motion, as his views would probably be useful to the Committee on the Judiciary.

Mr. KANE then rose, and said, that the explanation required by the honorable gentleman from Maine, lay within narrow limits, and might be explained in few words. The object

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*On the Judiciary.*

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is, as expressed upon the face of the resolution, to procure such amendments in the acts of Congress, regulating processes in the Courts of the United States, as will place the citizens of the several States upon a footing of equal security in their persons and property. The process act of the 28th September, 1789, amongst other things, in effect, provided that the modes of process in the Circuit and District Courts, in suits at common law, should conform to those *then* used in the Supreme Courts of the States. By "modes of process" was meant, as is decided in the case of *Wayman vs. Southard*, by the Supreme Court, every step taken in a cause; and "indicates the progressive course of the business from its commencement to its termination." Thus, the persons and property of the citizens of the States *then* in existence, were placed under the protection and guardianship of their own laws. This provision continued in force, without modification, until the act of May, 1792, was passed, by which the same was made subject to such alterations and additions as the Circuit and District Courts might make, and to such regulations as the Supreme Court of the United States should, by rule, prescribe. He did not understand, nor did he know that it was so understood anywhere, that these "modes of proceeding" were by this latter act made subject to any alterations, additions, or regulations, other than such as time and practice should show to be indispensable to the correct administration of justice. The benefits of the provisions of '89, have been adjudged to have application to the citizens of those States only which had existence when the act was passed. It was for the purpose of placing the citizens of other States upon the same footing, that he ventured to introduce this resolution. These citizens, in their persons and property, are now subject to be dealt with, not in a manner prescribed by their own laws, but according to such rules as the courts may think proper to adopt. The State which he had the honor in part to represent, as is the case with its neighbors, Indiana and Missouri, has no other than a District Judge. No inference was, however, to be drawn from the few remarks he had submitted, that the judges are blamable for the manner in which they have exercised so large a discretion. The principle is to be dreaded; and the cause of complaint may be removed by extending the benefits of the act of '89 to all the States, or by the passage of a law establishing a system uniform and impartial in its operations. It was not essential to the explanation required of him, nor to the purpose of the resolution, that he should, on this occasion, indicate a preference for any particular plan; but he would think himself fortunate if he had succeeded in convincing the Senate that further legislation was necessary.

Mr. HOLMES, of Maine, said his object was attained by the clear explanation given by the honorable mover. He had pointed out the evil, and the remedy he proposed: this was the ob-

ject he had in view in calling on him, and he was perfectly satisfied.

The question was then taken, and the resolution agreed to.

THURSDAY, December 15.

*On the Judiciary.*

The Senate proceeded to consider the resolution submitted yesterday by Mr. JOHNSTON, of Louisiana, on the subject of the Judiciary.

Mr. JOHNSTON said, that the resolution he had submitted required no illustration. The subject was familiar to the Senate, and especially to the committee to whom it was proposed to be referred. It had been repeatedly pressed upon Congress; and, at the past session, it had been deferred, under the assurance, that, at the present, something definitive should be done. Mr. J. said, that, when this subject was thrown open, so many different views were taken; so many projects for the reorganization of the courts were presented; such diversity of opinion prevailed, that every scheme successively failed. The new States, aware of the difficulty of perfecting, in any short time, any new system of reconciling public opinion to it, as well as the time necessary to arrange all the details of an extensive and complicated plan, had now to ask of Congress to extend to them at once the benefits of Circuit Courts; and, at the same time, to remedy all the inconveniences from the defective arrangements of these courts, as well as the laws regulating the jurisdiction and the mode of proceeding. Mr. J. said, the first part of the resolution related to the Supreme Court, and, unless some amendment could be obtained in its terms, it would be useless to ask an extension of the Circuit Courts. He said he presumed that, at every term, 70 or 80 causes were left undecided; and that, at this time, more than twice that number were on the docket, and that that court could not, in the short space allotted to them, determine half those causes. The effect was, that no judgment could be had in the court of last resort under two years, and sometimes three; that the court could not now keep pace with the progress of business, and the docket would constantly augment; that a great mass had already accumulated, involving constitutional construction, property to an immense amount, and principles of great interest. Such a distribution of the Circuit Courts must be made, as will afford a longer session to the Supreme Court, and, even then, it is feared that some time will elapse before they will discharge the accumulated business. He said the establishment of Circuit Courts was required by nine States, the state of the country imperiously demanded that the system should be equal and general, and he hoped it would be no longer delayed under the idea that some other system would be adopted. He concurred with all those States in asking this now at the hands of Congress. We shall then be upon an equality, and prepared to



discuss any new project that may be submitted. Mr. J. then went at length into the inconvenience which had resulted from the expression of the Judiciary act of 1789, prescribing to the Courts of the United States the mode of proceeding. He said the mode of proceeding, in the several States, at the date of the act, had been prescribed. The consequence was that the States admitted since had no law on the subject. He said it was submitted to the gentlemen representing the old States, to be governed by that law still; but it deprived those States of all improvement which might have been made since in their legislation, especially with regard to executive laws. It destroyed the conformity which ought to exist in the rules and practice in all the Courts administering justice, within the same limits, upon the same contracts. It created some confusion and some inequality, by prescribing different measures of justice to different parties; besides, almost every State had found it necessary to adapt her laws to the peculiar circumstances of the country, and sometimes to alter them under the pressure of events which the State thought justified their interposition.

In regard to the State, admitted in the Union since the Judiciary act, they had no law, and the courts of the United States had undertaken, not only to prescribe rules of proceeding, but to exercise the highest act of sovereignty, by making laws to supply the defects of our legislation—a power which Congress cannot delegate. This subject was clearly explained yesterday by the honorable member from Illinois, (Mr. KANE.) Mr. J. said, that, if we prescribed the laws of the several States for the government of the United States Courts, there is still another difficulty—those laws may violate contracts; they may be unconstitutional; and, in that event, those courts would have no authority to enforce their judgments. The only law which they could employ, to give effect to their judgment, would be declared by themselves null and void. It must be our duty, therefore, to provide for such an occurrence by a general law applicable to such a state of things. For himself, he could only wish, that the courts of the United States, in Louisiana, should be governed, in all cases, by the laws of the State.

Mr. J. said that under the present Judiciary act, a deviation from the laws of all the States had been permitted, as unfriendly to civil liberty as it was vexatious and oppressive. It permitted the judgment creditor to take execution: in the first instance against the body of the debtor, to hold him in prison until the money was coerced either from him or his friends. It is arming a vindictive creditor with a power over the personal liberty of the debtor—to exercise the most malignant vengeance, and at once to degrade and ruin him. He said that the law which permits a man to be deprived of his liberty, while he possesses property, on the faith of which the contract was made, can only be equalled in absurdity by a law which authorizes his

perpetual imprisonment because he has the misfortune to have none. This power had been, in many instances, seized on and exercised in a most unfeeling manner. It is believed not to be consonant with the laws of any of the States, and to be unworthy of our legislation. Mr. J. remarked, he had merely hinted the propriety of restraining the jurisdiction of the courts in civil cases. It was known that the States had competent courts for the administration of justice, conveniently situated to the parties, to which they could resort without much inconvenience or expense. That justice was uniformly and impartially administered. It was now known that the distrust and jealousy of the States was without foundation. That, in fine, there was no necessity for a court to decide causes between citizens of different States. The Courts of the United States had unlimited jurisdiction over a great extent of country, and were often used oppressively. Citizens of States are often sued at the distance of two hundred miles from the seat of justice; they are inconveniently carried to a great distance, with an expense which they cannot afford, deprived of the means of defence, and removed from their witnesses; and what is gained by the other party? The cause is tried by the same laws—by a judge and jury, resident in the same State. He submitted to the committee whether it would be advisable to limit the jurisdiction; and, he said, as it was an onerous and odious jurisdiction, it ought to be restrained to the immediate parties to the contract; even in commercial cases. Mr. Johnston said he had only taken a desultory view of the subject, merely to point out these objects to the attention of the committee, and to ask of them at once to extend the Circuit Courts over all the States, and to make some reformation in the Judiciary act.

The resolution was agreed to.

*Amendment to the Constitution—Election of President.*

The Senate proceeded to consider the following resolution, submitted yesterday by Mr. BENTON:

*Resolved,* That a select committee be appointed, with instructions to inquire into the expediency of amending the Constitution of the United States, so as to provide for the election of President and Vice President, by a direct vote of the people, in districts.

Mr. HAYNE was rejoiced to see that the gentleman from Missouri had thus early called the attention of the Senate to this important subject; but he thought he had not made the inquiry sufficiently extensive; he had confined it merely to the mode of election; but Mr. H. thought an attempt ought also to be made to secure the election of President of the United States from the intervention of the House of Representatives; and he, therefore, moved to amend the resolution, by adding the following:

“And that the committee be further instructed to inquire into the expediency of so amending the

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constitution as to secure the election of President and Vice President of the United States, without the intervention of the Senate or House of Representatives."

Mr. MACOON said that it would be wise, in adopting a resolution of this kind, to give the committee all the latitude that could be given, that they might examine the subject in every particular, and make the inquiry as broad as possible. He had not the same opinion of any particular mode of electing a President of the United States as he formerly had, but inclined to favor the district plan.

Mr. DICKERSON said it was highly desirable that the President and Vice President should be elected without the interposition of the Senate or House of Representatives; but it was a question with him, whether it could be completely effected. He did not think the constitution could be so amended as to prevent, at some time or other, and under some unforeseen contingency, the election coming to the House of Representatives. If any mode had been devised, it had not yet been shown to them. It was hardly correct, that the members should commit themselves on this point, thus early, on preliminary propositions, and he should, therefore, vote against the resolution.

Mr. HAYNE said the proposition merely proposed an inquiry. The gentleman allowed it was expedient that it should be done, and, by voting for the inquiry, he would not in any way commit himself. The only object was, for the committee to ascertain whether the propositions contained in the two branches of the resolution could be carried into effect. This was what had been done in Congress the last session. A proposition was submitted, similar to that now submitted by the gentleman from Missouri, but in a positive shape, not for an inquiry. It was referred to a committee; and a variety of propositions that were made on the same subject, were referred to the same committee; and if the gentleman from New Jersey should wish to submit any proposition himself, he should be perfectly willing it should accompany this resolution to one committee.

Mr. BENTON said, as one taking a deep interest in the subject, he should be glad that any gentleman in the House, who had turned his attention to the subject, and could suggest any mode that promised to be beneficial, would submit his resolution, which should be referred to the same committee with the resolution he had submitted. Whatever committee might be charged with this subject, he should feel obliged to any gentleman that would contribute any thing that would tend to turn the attention of the committee to it. He wished the proposition he had submitted should have an examination. Since it resolved nothing, and committed nobody, it was perfectly innocent and harmless in its present shape. As to the amendment of the gentleman from South Carolina, it only tended to enlarge the field of inquiry, and he could not object to that or any other propo-

sition that was calculated to promote that end.

Mr. HOLMES, of Maine, said he generally voted in favor of resolutions of inquiry on almost every subject; but he had not much confidence in amendments of the constitution, of any kind. He thought the time was gone by for amending the constitution, and perhaps it was well that it was so. It was easier for them to break it ten times than it was for them to amend it once, and if they tried to mend it only in those places where they had broken it, they would have enough to occupy them for a considerable time. He should not vote for the resolution under the expectation that much would be done; but he was willing that an inquiry should be made. He was not in favor of the measures of either of the gentlemen, but he should vote in favor of the amendment to the resolution, and then for the resolution as amended.

Mr. R. M. JOHNSON, of Kentucky, said, he was happy to find that the proposition to appoint a committee embraced a specific proposition to amend the constitution relative to the choice of a President and Vice President of the United States. The gentleman from Maine had, he feared, uttered a solemn and awful truth, when he said that the time had passed for amending the constitution, and that it could be broken with more facility than it could be amended. Mr. J. said he should be more apprehensive of the truth of this belief, if this spirit of opposition should apply to amendments which proposed to vest the people of this country with the exercise of the great essential principles of self-government; principles upon which he conceived the prosperity, happiness, and perpetuity of our free institutions principally depended.

If, in the infancy of our Republic; if, in the first year of our political Jubilee, we discovered this opposition, what might we expect in mature age? He said our first political jubilee commenced the 4th of July last. This was the fiftieth year of our independence. For his part, he said, he never wanted to see any friend of his called upon, as a member of Congress, to vote for the President and Vice President of the United States; for the world was invidious, and no matter what purity members could boast of, even if they possessed the purity of angels, their vote, in many cases, would make them obnoxious to imputations. This was one reason why he was in favor of the proposed amendment, an amendment proposing that, in no event, and in no contingency, should the duty of electing devolve upon Congress, or either House. His desire was, by such amendment, to place the members of Congress not only beyond temptation, but beyond suspicion. Till then, he looked in vain for that harmony, concord, and affectionate feelings, which should always exist among those associated for the same great object, of giving laws and rules of conduct and action to a free people. In vain

he expected to see a President elected by Congress hailed as the President of the nation; and, finally, till this right was exclusively vested in the people, or some other agents than Congress, we should never see members voting for and against measures proposed by the administration, without being charged with being partisans on the one hand, or opponents on the other. If we have any political principles and maxims, Mr. J. said, in which we all concur, he thought it was, or would be, admitted by all, that, wherever it was practicable, the people should be vested with the exclusive right of choosing men to rule over them. It was as practicable, in this instance, he thought, as it was to elect Representatives to Congress. And why not give the power? The gentleman from New Jersey seemed to doubt its practicability. This Mr. J. regretted very much; he thought the gentleman had given a timely caution how we committed ourselves on any one proposition, and, at the same time, expressed his conviction that the proposition to give the exclusive right to the people could not be realized. Mr. J. regretted this the more, when he recollected the long services, the general attainments, and the democratic principles of the worthy member from New Jersey. For his part, Mr. J. said, he should pursue one undeviating course in this matter, and that would be to vest in the people at the polls the right exclusively, under all contingencies, to elect the President and Vice President of the United States; and if he could not obtain that result, he would give such votes as would more nearly bring the power to the exercise of the people, and in no event to vest the power in Congress.

The question was taken on Mr. HAYNE'S amendment, and carried.

Mr. COBB then rose, and said that, without entering into the inquiry whether they could strike out a mode for the election of President and Vice President, without the intervention of either branch of Congress, he would offer an amendment that went to another point: its object was to instruct this same committee to inquire into the expediency of so amending the constitution, as to prohibit the appointment of any member of Congress to any office of honor or trust under the United States during the term for which such senator or representative should have been elected. If this amendment were adopted, the evil would not be so great in referring the election of President to the decision of either branch of Congress. While he had the honor of being a member of the other House, he said, he submitted a similar proposition, and though there was not a sufficient vote to carry it through, he had the consolation of knowing that the vote in favor of it was very respectable. He thought there could be no better time than the present to renew the proposition; if the committee could not devise a mode by which the election could be effected, without the interposition of Congress, then it became the more proper to in-

quire whether they should not remove from those on whom the election must devolve all temptation that might bias them in that election. He would not make any observations as to the fact of how far any member of Congress might be influenced by the hope of office, in voting; but every member would see, from the fallibility of human nature, that it was almost impossible for men sometimes not to be influenced. Mr. C. said he wished to cut off every thing that could tempt a man, and entirely destroy all hope of office, and all imputation whether they should vote right or wrong. Mr. C. concluded by moving an amendment to the resolution, corresponding to what he had stated in his remarks; and

The question being put on Mr. C.'s amendment, it was agreed to, *nem. con.*

Mr. MACON said he still thought that, instead of referring to the committee separate and distinct propositions, it would be better to commit the whole subject of the election of President and Vice President of the United States, that the committee might devise and report such plan as they should think best to avoid the existing evils, and secure the benefits which were deemed desirable in the mode of electing those officers. He therefore moved the following as a substitute for the resolution, and the several amendments already adopted, viz:

"That a select committee be appointed, who shall inquire into the expediency of so amending the constitution, in the election of President and Vice President of the United States, as to attain the best, most preferable, and safest mode in regard to such elections."

After some conversation as to the expediency of this general reference, in preference to the propositions previously offered, between Messrs. HOLMES, MACON, JOHNSON of Ky., and COBB,

Mr. MACON'S motion was agreed to, and his amendment adopted.

Mr. VAN BUREN then said, that this was a subject on which great diversity of opinion had existed, as was manifested both at the last session, and at the present, by the number of propositions that had been offered. It was from this consideration that he thought a larger number should compose the committee to whom the subject was now to be referred, than was usual, and, therefore, he should move that nine be appointed.

That number was agreed to. \*

TUESDAY, December 20.

*Internal Improvements.*

Mr. VAN BUREN submitted the following motion for consideration:

"Resolved, That Congress does not possess the power to make roads and canals within the respective States.

"Resolved, That a select committee be appoint-

\* The committee were: Mr. Benton, Chairman, Mr. Maccon, Mr. Van Buren, Mr. Findlay of Penn., Mr. Dickerson of New Jersey, Col. Richard M. Johnson of Kentucky.

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ed, with instructions to prepare and report a joint resolution, for an amendment of the constitution, prescribing and defining the power Congress shall have over the subject of internal improvements, and subjecting the same to such restrictions as shall effectually protect the sovereignty of the respective States, and secure to them a just distribution of the benefits resulting from all appropriations made for that purpose."<sup>a</sup>

In introducing these resolutions—

Mr. VAN BUREN said that it would be recollected that he had, some days since, given notice of his intention to ask for leave to introduce a joint resolution, proposing an amendment of the constitution on the subject of the power of Congress over the subject of internal improvements. Upon the suggestion of gentlemen who feel an interest in the subject, and think the principal object can, in that way, be better effected, he had consented so far to change the course originally contemplated, by substituting resolutions expressive of the sense of the Senate on the constitution, as it now is, and proposing the appointment of a select committee to report upon the subject, under such instruction as the Senate may think proper to give. Such resolutions he would now take the liberty of submitting. He did not, of course, wish to press their immediate consideration, but would call them up at as early a day as would comport with the state of public business and the ordinary course of proceeding in the Senate. He hoped he would be excused for expressing an earnest wish, that the conceded importance of the subject would induce gentlemen to turn their attention to it as soon as they conveniently could, to the end that, when it was taken up, it might be carried to a speedy decision, and not exposed to those unprofitable delays and postponements which had heretofore attended measures of a similar character, and ultimately prevented an expression of the sense of the Senate on their merits. He deceived himself, if there was any matter in which, at this moment, their constituents felt a more intense interest, than the question of the *rightful* and *probable* agency of the General Government in the great work of internal improvement. Whilst, in the States, measures of that description had been harmonious in their progress, and, as far as the means of the States would admit of, successful in their results, the condition of things here had been of a very different character. From the first agitation of the subject, the constitutional power of Congress to legislate upon the subject, had been a source of unbroken, and, frequently, angry and unpleasant controversy. The time, he said, had never yet been, when all the branches of the legislative department were of the same opinion upon the question. Even

those who united in the sentiment as to the existence of the power, differed in almost every thing else in regard to it. Of its particular source in the constitution, its extent and attributes, very different views were entertained by its friends. There had not been any thing in the experience of the past, nor was there any thing in the prospect of the future, on which a reasonable hope could be founded, that this great subject could ever be satisfactorily adjusted by any means short of an appeal to the States. The intimate connection between the prosperity of the country and works of the description referred to, would always induce efforts to induce the General Government to embark in them, and there was but little reason to believe that its claim of power would ever be abandoned. As little reason was there, in his judgment, to expect that the opposition to it would ever be given up. The principles upon which that opposition is founded; the zeal and fidelity with which it has hitherto been sustained, preclude such an expectation. If this view of the subject was a correct one, and it appeared to him that it was, he respectfully submitted it as a matter of imperious duty, on the part of Congress, to make a determined effort to have the question settled in the only way which can be final—an amendment of the constitution, prescribing and defining what Congress may, and what they shall not do, with the restrictions under which what is allowed to them shall be done. It appeared to him, that, not only every interest connected with the subject, but the credit, if not safety, of our enviable political institutions required that course; for it must be evident to all reflecting men, that the reiterated complaints of constitutional infraction must tend to relax the confidence of the people in the Government, and that such measures as may be undertaken upon the subject, must be constantly exposed to peril from the fluctuations of the opinion of successive legislatures. The subject, he said, had been viewed in this light by some of the best and ablest men the country has produced. As early as 1808, the propriety of an appeal to the States upon the point in question, had been suggested by Mr. Jefferson, in his last message to Congress. The same course had been recommended by Mr. Madison, and the recommendation repeated by Mr. Monroe.

#### *Revolutionary Bounty Lands.*

The resolution submitted yesterday, by Mr. WOODBURY, relating to Bounty Lands, was taken up. Some discussion took place between Messrs. KING, BARRON, and EATON, as to the best mode of proceeding in the case, and the most eligible committee for the reference of the motion.

Mr. LLOYD, of Massachusetts, observed, that the course pursued by the gentleman from New Hampshire, (Mr. WOODBURY,) was the correct and proper one on this occasion; he had no

<sup>a</sup> It will be observed that this proposed amendment applies only to States, there being no question at that time in relation to the exercise of the internal improvement power in Territories, upon the ground that the constitution did not extend to them.

doubt there are many meritorious officers and soldiers of the Revolutionary army, still living, and the descendants of many who are dead, that are entitled to the Bounty Lands, promised by Government, who had not applied, from ignorance of their claims. The object of the proposition of the gentleman from New Hampshire was, to inform them of their rights. This subject, Mr. L. said, had been pending for nearly thirty years, and ought to be brought to a close; he hoped, therefore, the resolution would be adopted.

Mr. MAOON said he had his doubts as to the beneficial effects proposed to be derived from the resolution. It appeared to him, that, instead of preventing speculation, it would encourage speculators to ride over the country, buying up these claims. In early life, in Congress, Mr. M. said he remembered there was one question that bordered on this: it was, to get the statute of limitation suspended for revolutionary services. Speculators went out and administered all over the Union, on the property of persons having claims, and, in one case, two administrators came forward upon the same estate, and the man himself, the original claimant, upon whose estate they pretended to have administered, came afterwards. He was thought an impostor—but his captain happened to be in Philadelphia, to prove his right, and the man received his claim. Publishing these names, Mr. M. said, would be to set all the speculators abroad throughout the nation. If the law had expired, allowing these people time to obtain their warrants, he would submit whether it would not be better to revive it, that they might get their warrants, without any speculations on the subject.\*

Mr. HOLMES, of Maine, thought that, at present, all the advantage was on the side of the speculators; but, if the names were published, there would be something like an equal chance. He knew of some speculators who had been riding about the country, informing these claimants that they could obtain these land warrants for them. If the information were distributed throughout the country, it would be understood that the best way would be for the claimants to apply to their members of Congress, who would charge them nothing for obtaining them.

Mr. RUGGLES thought it was desirable that some measures should be adopted to bring this business to a close. In consequence of these warrants being outstanding, there was land in the State of Ohio, which could not be sold, or brought into use, and it was highly important to that section of the country, that those who were entitled to those warrants should not remain in ignorance of their rights. He suggested

\* The experience of thirty years more has confirmed the wisdom of these remarks. The speculations have been greater in the thirty years since 1826 than in the thirty years before. Speculation in these land warrants has become a profession in the United States—one of the industrial professions; and is most industriously pursued.

whether it would not be more advisable to lay the resolution on the table, till some mode should be devised that would be of service to the old soldier, without benefiting the speculator. He would, he said, unite in any motion by which Congress might satisfy these claims, and let the land in the State, which should remain unclaimed, be sold.

Mr. WOODBURY said he should have no objection to the resolution's being laid on the table, if delay would throw any light on the subject; but, as it was only for an inquiry into the expediency of the measure, he thought it would be as well that the resolve should be acted on now.

After some further observations from Mr. LLOYD, of Massachusetts, to show that there was no danger of speculation in this matter, as the laws now stand—and an ineffectual motion, by Mr. EATON, to lay the resolution on the table, it was adopted.

The Senate adjourned to Thursday.

TUESDAY, December 27.

Captain Porter.

The VICE PRESIDENT communicated a letter from David Porter, a Captain in the Navy of the United States, and late commander of the squadron on the West India station for the suppression of piracy, requesting that the subject of certain communications from Thomas Randall and John Mountain, communicated to the Senate at the last session, and which he deems highly injurious to the character of himself, and the other officers of the squadron, may be investigated, and a decision pronounced thereon; and,

On motion, it was ordered, that this letter be printed for the use of the Senate; and that it be referred to the Committee on Naval Affairs.

WEDNESDAY, December 28.

*Florida Territorial Legislation in relation to Wrecks.*

The Senate proceeded to the consideration of a resolution, submitted yesterday, by Mr. JOHNSTON, of Louisiana, calling for an inquiry into the law of the Territorial Government of Florida, relating to wrecks.

Mr. MILLS said he should be obliged to the honorable mover, if he would point out some source from which the Judiciary Committee might derive the necessary information: it would be desirable, if it could be procured, that the law of Florida referred to in the resolution now under consideration, should be laid before them, that they might know what it was; but, as the resolution now stands, it would be impossible for them to ascertain from what source they were to procure the information required.

Mr. JOHNSTON, of Louisiana, said, the gentleman was aware that it was the business of the Governors of Territories to forward copies of the laws of the Territories, to undergo the

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supervision of Congress, and that they would remain in force, unless disapproved. The resolution he had submitted, called the attention of the Judiciary Committee to the laws of the Territory of Florida, particularly to the law relating to wrecks. These laws had doubtless been transmitted to the proper Department, to be laid before Congress; and the committee, by applying, could obtain them. Mr. J. said he had handed to the chairman of the committee some letters and publications relative to this subject, from which it appeared that great abuses existed. The act of Congress, passed last session, requires that the whole amount of property wrecked should be carried into the ports of the United States. He understood that a very summary process had been instituted at Key West, by which all property that was wrecked was decided by four or five individuals, who were perhaps interested in the event—a large property has been condemned, and a salvage of from 70 to 90 per cent. allowed. Mr. J. then adverted to the immense amount of commerce which passed through the Gulf of Mexico, and to the heavy losses that are every month sustained by casualties; and stated the fact, that, in the month of September last, no less than ten vessels were lost on that coast. Mr. J. said this had been a great subject of complaint, from our own citizens, particularly from the Insurance Companies; and he had a knowledge that two of the Foreign Governments had applied to this Government for redress, stating, that the abuse is so enormous, it is worse than piracy. If the laws had not been transmitted from the Territory, Mr. J. said he had not the means of obtaining them; and he could not tell how the Judiciary Committee would act on the subject.

Mr. HOLMES, of Maine, said he recollected one instance of this kind which had been referred to the Judiciary Committee, who made application and obtained the Act of Florida from the Department of State. A bill was reported by that committee to repeal certain acts of the Territory of Florida in regard to unreasonable taxes imposed. That bill passed both Houses of Congress: he recollected that case distinctly, and he believed that the act regulating the Government of Florida required that copies of the laws should be transmitted, to be laid before Congress, who possessed the power of revising all the laws of the Territories.

The resolution was then agreed to.

THURSDAY, December 29.

*Captain Porter.*

Mr. HAYNE rose, and said, that, in obedience to a resolution of the Senate, the Secretary of the Navy had transmitted to the Senate the proceedings of the Court of Inquiry, and of the Court Martial, on Commodore Porter. Since this report had been made, the Commodore had addressed a letter to the presiding officer

of the Senate, which had been referred to the Committee on Naval Affairs. That the committee might have the whole subject before them, Mr. H. moved that the letter of the Secretary of the Navy, and proceedings of the Court of Inquiry and Court Martial, be referred to the same committee.

Mr. LLOYD of Massachusetts, said he thought it necessary to state to the Senate the circumstances under which he had become connected with this subject. A few days after his arrival at Washington, Commodore Porter called on him, and handed him a letter, requesting he would move a call for the proceedings of the Court of Inquiry, which was held on him and his officers, who had charge of the squadron on the West India station, in the years 1823 and 1824. From the good disposition which he felt to all the gallant officers of the Navy, and certainly the distinguished hero of Valparaiso was one of them, he said he had no objection to the call being made, although he was not in possession of the circumstances of the case. In consequence of this, Mr. L. said, as he had no views of his own to answer, he thought it proper to ascertain whether the call was ready to be complied with, and, in prosecuting this inquiry, he found that the proceedings of the Court of Inquiry and of the Court Martial had been printed, and bound up together in one volume, of which there was a considerable number with the Navy Department, ready to answer the call of either House of Congress. In consequence of this, Mr. L. stated these facts to Commodore Porter, who assented to the resolution's being presented in the shape in which it passed the Senate. Some days after this, Commodore Porter asked him what measures he intended to adopt with regard to the communication from the Navy Department: that communication had not then been received, and Mr. L. said he knew nothing more of the subject than was contained in a pamphlet the Commodore had sent him, and what he had collected from the newspapers; and until the communication from the Navy Department had been received, and he was better acquainted with the subject, he did not think it consistent with the decorum due to the Senate to adopt any further measures in reference to it. His object, he said, was answered, by obtaining the communication from the Navy Department, and having it laid before the Senate. Another reason which had induced him not to come to any determination on the subject, was this—he had seen that, when a similar motion was made, in the other House, it was stated there was other information connected with the case, which he believed had been ordered to be furnished; and wishing to know what that might contain, he had determined not to proceed. Mr. L. concluded, by observing that he thought the respect due to the Senate, and to himself, had required that this explanation should be made.

The motion of Mr. HAYNE prevailed, and the documents were referred accordingly.

TUESDAY, January 8, 1826.

*Import of Wines.*

Mr. LLOYD, of Massachusetts, rose, and said that a communication had been laid on the table this morning, from the Treasury Department, relative to the quantity of wines imported into the United States since the year 1800. Mr. L. said that the object of procuring the information from the Treasury Department, in answer to the call that had been made for it, was to lead to an investigation, as to the expediency of endeavoring to restore a trade to the United States, which had formerly been one of much advantage, but which in some of its branches, from the heavy rate of duties imposed on it, had of late years been greatly diminished. This could be done, as he apprehended, only by a reduction of the rate of the existing high duties on the importation of certain wines. The Secretary of the Treasury, in his Annual Report, had suggested the propriety of reducing the rates of duty on teas, coffee, and cocoa, and, as he believed, had wisely done it; but all the reasons in favor of such a reduction, applied as strongly at least to the importation of wines. The trade with the wine-growing countries had formerly been more strictly a barter-trade than almost any other enjoyed by the United States; the wines were received in return for the shipment of our domestic products—the flour, corn, staves, and provisions of the country—whereas the trade in teas, and in coffee, so far as it was received from Java, Sumatra, and Arabia, was prosecuted with specie; and although he had no alarms respecting the exportation of specie, believing that, in a time of peace at any rate, and in an open market, the supply would be generally equal to the demand; yet, as he did consider a trade which was commenced by the exportation of our own domestic products, and which gave two freights to our vessels instead of one, was equally worthy of consideration, he had moved for the information which had been given; and, as he understood the Committee of Finance had under consideration the subject of a reduction of duties on importations, he would move the reference of the statement received from the Treasury Department to that committee, to consider thereof.

The reference to the Committee of Finance was then agreed to.

THURSDAY, January 5.

*Florida Canal.*

Mr. HAYNE, of South Carolina, stated, that he had received a memorial, which he was requested to present to the Senate, on the important and interesting subject of a canal to connect the waters of the Atlantic and the Gulf of Mexico, across the Peninsula of Florida. It appears that the Legislative Council of Florida, deeply impressed with the importance of a work which they suppose will relieve the commerce of the United States from heavy

losses now sustained from shipwrecks, had, in December last, passed an act appointing Commissioners to report on the expediency of opening such a canal. Three of the most eminent citizens of the Territory had been appointed, pursuant to the provisions of that act, one of whom (Col. James Gadsden) was advantageously known to the country as formerly a distinguished officer of the Army of the United States, and a man of great talents as a civil and military engineer. It appears from the memorial forwarded by these gentlemen, that they are ready to enter into the duties of the appointment, which are to be gratuitously performed, so soon as such aid should be afforded by the United States as was deemed essential to the successful execution of the task. It was deemed by these gentlemen essential that skilful engineers should be appointed by the United States to accompany the Commissioners in making the necessary explorations, and the memorial asks of Congress the necessary aid to enable them to enter immediately on the work. Mr. H. said he presumed that whatever might be the final decision of Congress on the subject of this canal, it was due to the respectable source from which this memorial emanated, that it should receive the most respectful consideration. He, therefore, moved that the memorial and the act of the Legislative Council of Florida be printed for the use of the members. Mr. H. then presented the memorial of James Gadsden and Edward R. Gibson, Commissioners, appointed by the Legislative Council of Florida, "to examine into the expediency of opening a canal through the Peninsula of Florida, from the waters of the Gulf of Mexico to the waters of the Atlantic," accompanied by the said act, and praying for aid of Congress for the immediate exploration of the country, under the direction of skilful engineers: which, on motion of Mr. HAYNE, was ordered to be referred to the Committee on Roads and Canals, and to be printed for the use of the Senate.

Mr. JOHNSTON, of Louisiana, said the gentleman from South Carolina had presented a paper on a subject which he himself was just about to rise to bring to the notice of the Senate in the shape of a bill; and he now gave notice that he should, on Monday next, ask leave to introduce a bill for a survey and estimate of a canal through the Peninsula of Florida, from the mouth of St. John's River to Vocassassa Bay, in the Gulf of Mexico, and to ascertain the practicability and expense of a ship channel.

MONDAY, January 9.

Mr. VAN BUREN, from the Committee on the Judiciary, to whom was referred so much of the President's Message as related to the Judiciary, together with the several resolutions which had been submitted on that subject, rose to make a report. The subject of amending

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the Judicial System of the United States had, he said, been before that committee for the last two or three sessions, and had always proved a matter of great difficulty. During the last session of Congress the Judiciary Committee of the Senate had reported a bill "to increase the number of Associate Judges from six to nine, and of the Circuits from seven to ten," which, together with an extension of the time for holding the term of the Supreme Court, was all the improvements that were then contemplated. That bill was discussed, and received the assent of a majority of the Senate, but was not finally acted on for want of time. The committee had again considered the subject, and had bestowed on it all the attention which its importance required; and a majority of the committee had concluded to report a bill containing similar provisions with that which was reported last session; although they believed it not to be free from objections, still it was less objectionable than any the committee were able to devise. What was of still more importance, they believed it was a measure which was likely to succeed; and this opinion was strengthened by the fact, that a bill containing substantially similar provisions, had been reported by the Judiciary Committee of the other House, where it had apparently been received with favor, and partly acted on.

Mr. VAN BUREN then reported the bill "further to amend the Judicial system of the United States;" and the bill "altering the time of holding the session of the Supreme Court of the United States;" which were read, and passed to a second reading.

TUESDAY, January 10.

*A proposed Perpetual Act.*

The Senate proceeded, as in Committee of the Whole, to consider the bill "to revive and make perpetual an act, entitled 'an act fixing the compensations of the Secretary of the Senate and Clerk of the House of Representatives, of the clerks employed in their offices, and of the Librarian.'"

Mr. RANDOLPH, of Virginia, said, although he knew it was a received maxim, *de minimis non curat lex*, yet, often, in small matters, bad precedents crept into legislation; therefore, he should move to strike out the words making this act perpetual, because he did not think there ought to be any perpetual law, under this or any other Government, except the fundamental or constitutional law. He believed it was very well that these acts, and all other acts, should come under the revisal of the Legislature, from time to time. A very wise provision was made in relation to the appointing power of the President, appointing certain officers only for a limited time, that the appointments might be revised from time to time by this House; and if it held good in relation to appointments, it would, *a fortiori*, hold good in relation to laws. As it would be necessary,

after striking out, to put in some period of limitation, he would propose it should continue in force till the 3d of March, 1830.

A division of the question being required, it was first taken on striking out, and decided in the affirmative; and, after some conversation between Messrs. EATON, HOLMES, and RANDOLPH, as to the time to which the act should continue in force, Mr. HOLMES moved to insert "four years, and thence to the end of the next session of Congress, and no longer." Mr. CHANDLER moved "three years, and thence," &c., which was carried, and the bill was then ordered to be engrossed for a third reading.

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Mr. JOHNSTON, of La., said he would make a few remarks in explanation of the object of the bill. It provides, said he, for an examination of all the country south of the St. Mary's and Appalachicola Rivers, to ascertain the most eligible route through which to connect the Atlantic and the Bay of Mexico. It contemplates, after this reconnoissance, a scientific survey of the several routes, with a view to obtain all the facts in relation to the localities of the country and the coast, and to obtain such plans, estimates, and opinions, as will hereafter enable Congress to act on this subject.

The measure proposed has in view two distinct objects: 1. A canal in connection with a general system of inland navigation. 2. The practicability of a ship channel. I feel it, said Mr. J., my duty, as well from the public station which I fill here, as the peculiar interest and position of the State I represent, to bring before this House, separately, a subject which concerns my State, which unites every interest, and in which, happily, we can all concur without violating any constitutional principle. The connection of the Gulf of Mexico with the Atlantic forms a part of the great system of inland navigation. It is the most important link in the chain of communication. It is the point of union between the two great portions of our country—the east and the west. Its political, military, and commercial advantages need not be illustrated here. The public opinion is already sufficiently enlightened and determined. It remains only for us to give it effect.

In regard to a canal navigation, it is satisfactory to know, that the work is not only practicable, but of easy execution, and at a small expense.

Many routes have been indicated, all of which are probably convenient, but it requires an accurate survey and estimate, to obtain a knowledge of the localities and expense, to enable us to decide. Two routes have been particularly mentioned in the bill. That from St. Mary's to Appalachicola is deemed practicable, and thought to possess many advantages. It passes through a sandy soil, of moderate elevation, abundantly supplied with water, and com-



municates with both seas in a deep channel; its distance not exceeding two hundred miles, and may be, in time, with increased advantage, extended to Pensacola Bay, and thence to Mobile Bay. That from St. John's to Vacassausa Bay, is a work of easy execution. The Peninsula is of secondary formation, or alluvion, with little elevation, and penetrated by a chain of lakes, which deviate only a small distance from the shortest line of communication between the two seas. The distance is not more than 92 miles, 18 of which are already navigable by the river. Throughout the remaining 74 miles, the soil is light, with little elevation, easily excavated, and many natural facilities. From the St. John's River, the first 16 miles are alluvion, with an elevation of only three feet above the waters of that river. From thence the line passes over a region whose elevation is estimated at eleven feet, but indented throughout by lakes, valleys, and creeks. It is formed of a strata of sand and clay, and bedded on limestone, lying probably below the point of excavation. The remaining 25 miles of the line is a gentle inclination from the Great Prairie Alachua to the Bay of Mexico, with sand, clay, and broken fragments of stone, mixed, and easily removed. Throughout the whole line there is an adequate supply of water, with an elevation of four feet in the centre, and a declination from that height to the Atlantic in 31 miles, and to the Bay of Mexico in 84.

It is, moreover, to be observed, that, by uniting the channels of a chain of lakes that extend into the interior, you will greatly diminish the line of excavation, the labor, and expense, while you will only increase the line of communication 18 miles. Thus much, said Mr. J. I have deemed it necessary to say, in regard to the two routes designated. But there are other and higher considerations connected with this subject, that claim the attention of this body. I mean the possibility of a ship channel across the Peninsula—an object which, if accomplished, would operate an extraordinary revolution in the navigation and commerce of this continent. From the information which I have on this subject, and the opinions of practical, experienced, and scientific men, I do not entertain a doubt that the work is *practicable*—at an expense which the object fully justifies—and within the means which we can fairly devote to it.

At present, more than one-half of the territory of the United States depends on the Mississippi River, and one-third of the population, and this proportion constantly increasing, have their commerce through the Bay of Mexico. It is the object of this bill to supersede the passage round the Gulf of Florida. Of the political and commercial advantages of this communication, I shall reserve the exposition until the bill is reported to the House.

The bill was then, on motion of Mr. JOHNSTON, referred to the Committee on Roads and Canals.

WEDNESDAY, January 11.

*Florida Wreckers.*

The Senate then proceeded to consider, as in Committee of the Whole, the bill "to annul an act concerning wreckers and wrecked property, passed by the Governor and Legislative Council of the Territory of Florida."

Mr. VAN BUREN moved to strike out so much of the bill as deferred the period of its going into operation, until the first day of March next. He observed, that, as the provision of the bill was a matter of considerable interest, he would state as briefly as the subject would admit of, the reasons which had induced the Committee on the Judiciary to report it. He said, that, by an established principle of maritime law, a reasonable compensation is allowed to every person who saves property wrecked on the high seas. The salvor has a lien on the property for his salvage, and his remedy in the District Court of the United States, to ascertain its amount and enforce payment. By the established practice of that court, appropriate proceedings are prescribed, which enable it to do justice to all concerned, by securing to the owners of the wreck the best practical notice, by making order for the security of the property during the progress of the claim, and by instituting an examination into the circumstances of each case, and settling such rate of salvage as is just and equitable: which, in the absence of treaty stipulations between the Governments of the salvor and owner, was left entirely to the discretion of the court; and, finally, by making disposition of the residue, after deducting the salvage allowed, including the right of adjudicating upon contested claims thereto, if any such existed. Such, he said, had been the result of this mode of proceeding, that there did not now exist a legislative provision upon the subject as it respects civil salvage, nor had any, to his knowledge or belief, been thought necessary since the establishment of the Government. By the act establishing a territorial government in Florida, the judicial power was vested in two Superior Courts, and those courts are clothed with all the powers of the District Courts of the United States, including exclusive original admiralty and maritime jurisdiction. It is made the duty of the courts, respectively, to hold their terms at Pensacola and St. Augustine: thus affording to the wreckers on that coast, all the advantages for the recovery of their salvage, and to the owners, all the security for their property which, by the law of the land, was extended to the citizens of the United States in general.

It appears that the inhabitants and Legislative Council of Florida, are not content with the law as it stood, and have passed the act proposed to be annulled by the bill under consideration. The act, he said, had been read, and would be found to contain many provisions of an extraordinary and highly exceptionable

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character. By it, the wrecker, instead of libelling the property in the Superior Court, and subjecting it and its future disposition to the order of that court, is directed to report it to a justice of the peace or notary public, who is authorized to summon a jury of five men; two of whom to be selected by the wreckers, two by the owner, and one by the justice or notary; or, in the absence of the owner, (a case, doubtless, of common occurrence,) the other three jurors to be selected by the justice or notary. To the award of this jury, is submitted the whole interest in question; including not only the rate of salvage, but the disposition of the wreck; and the Clerk of the Territory is charged with the execution of the award. Notice of it is to be published, for twelve months, in a paper published in the Territory, and if not claimed within that time, the whole property to belong to the salvors; if not claimed, the Territory to have 10 per cent. on the value of the property; if claimed, 5 per cent. on the surplus, and, in all cases, 3 per cent. on the whole value of their property—the justice, notary, and clerk, have also their per centum, and the jury a per diem allowance. The circumstances under which the law was to be executed, he said, left little doubt that its execution, for the most part, devolved on men who had personal interests in the subject, and would, of course, lead to gross perversions of justice. That such had been the result, the committee, he said, entertained no doubt. From the general statements which had been made, and which the committee thought entitled to credit, it appeared that the greatest abuses had been practised under the act in question—by omission to provide for the safety of the property during the time allowed for ransom, by improper conversion of the fund, and by the allowance of unexampled rates of salvage from 75 to 90, and, in one instance, as high as 94 per centum. The case of the brig *Hercules* had been particularly stated to the committee. From the documents on the table, it appeared that this vessel had been carried into Key West, having received but little injury, at least in comparison with the amount of salvage allowed. The underwriters in New York, on receiving information of the fact, sent their agent to the spot. On his arrival, he found a great part of the cargo already on board of a vessel for Havana, and other vessels ready to take the residue to different places, where it would have been impossible for the owners to have followed it, the packages broken, the marks effaced, and a salvage allowed by the jury, which induced him to pay \$72,500 for the ransom of the brig and cargo. This sum he paid, and submitted, moreover, to the most vexatious and oppressive impositions by the wreckers and their friends and abettors. But there was, he said, one view of the subject which superseded the necessity of further observation on the provision of the act in question, or the abuses which had been practised

under it, and that was, that the Legislative Council had no authority to pass it. By the act establishing the territorial government, a limit is put upon the legislative authority, that they shall pass no law inconsistent with the Constitution and laws of the United States. By the same act, the Superior Courts of the Territory are vested with exclusive admiralty and maritime jurisdiction. The act proposed to be annulled, gives to justices of the peace admiralty and maritime jurisdiction, in palpable violation of the fundamental law of the Territory.

Mr. V. B. said, that he had been informed, since the report of the committee, that the Supreme Court had decided that the law in question was unauthorized and void. He had not learnt on what grounds that decision was made, but presumed it was, as well it might be, on the plain principle he had stated. It was on that account that he wished the bill amended, so that it might go into operation immediately, and that the assent of Congress might in no way be given to its validity, which would be the case if the bill passed as it now stands.

The amendment was agreed to, and the bill ordered to be engrossed for a third reading.

THURSDAY, JANUARY 12.

*Prevention of Desertion.*

The Senate then proceeded, as in Committee of the Whole, to consider the following bill, "to prevent desertion from the army, and for other purposes."

[The remedy proposed by the bill was an increase of pay, and retention of part of the pay.]

Mr. RUGGLES said, as no gentleman seemed disposed to oppose the passage of this bill, and as he had some objections to it, he would state them very briefly to the Senate. He was sensible that his colleague, who reported the bill, must be better informed on this subject than himself, in consequence of his long experience in the military service. The object of the bill is to prevent desertion in the army. Any law that could be passed that would effect this object, would be a salutary one, and a sound measure of policy. But will this bill accomplish this desirable result? The first section provides that one dollar and fifty cents per month shall be retained out of the wages of the soldier, until the expiration of his term of service. Congress has, heretofore, thought that even increased pay and bounties were necessary to induce the soldier to enlist and serve faithfully. Large sums, in the shape of bounties, were given during the last war, to enable the Government the fill the ranks of the army. This bill changes the policy that has been heretofore pursued by the Government, and refuses payment for services actually rendered. This will not satisfy the soldier—it will not prevent desertion. The most effectual mode that can be adopted, is to pay them well and pay them

promptly. Mr. R. said, if he had a correct knowledge of that class of our population, who filled the ranks of our army in time of peace, he was satisfied that it was the pay that induced them to enlist and serve. They will not look to the termination of five years to receive their reward; the very act of withholding it will induce them to desert. The period is too remote to satisfy them; present enjoyment and prompt pay alone satisfies the soldier. There are many that enlist who have families to support, who stand in immediate want of their earnings, and whose families must suffer, unless they receive the just reward for their service. Congress has no more right to withhold the pay of the soldier, than the farmer has the wages of the laborer on his farm. What has been the principal cause of desertion, mutiny, and rebellion, in the armies of Europe, and particularly Spain? The answer is ready—The withholding the pay of the soldier. By this act, Congress is about to legalize a proceeding which has done so much mischief, and produced such great difficulties in Europe. Mr. R. said he would repeat, the only way to prevent desertion was to pay your soldiers well, and pay them promptly. The second section of the bill provides, that the soldier, who has served out one tour of duty, and re-enlists, shall receive one dollar per month more. This will produce great difficulty and dissatisfaction in the army. There can be no substantial reason for such a discrimination. They ought all to receive precisely the same pay—they stand in the same ranks, fight the same battles, and perform, in every other respect, the same duties. Will the soldier, under such circumstances, who receives one dollar less per month than his fellow soldier, be satisfied? He will not. He will complain; and, Mr. R. said, in his opinion, he would have just ground of complaint. This dissatisfaction, arising from an unequal distribution of wages, will induce him to desert, and leave the service in which they are not rewarded equally. The soldier who re-enlists at the end of five years' service, is, upon no just principles, entitled to greater pay than the man who leaves the plough and enters your army. Mr. R. said it was from a belief that the bill would not attain the object desired, and also that it was unequal and unjust in its provisions, that he should feel compelled to vote against it.

Mr. HARRISON, of Ohio, said, to save the trouble of further opposition to particular parts of the bill, he thought it due to the committee to give a general outline of the principles on which the bill had been adopted, and in so doing, he trusted he should give an answer to his friend and colleague. No one, Mr. H. said, who had turned his attention to the subject, would doubt that the system which the United States had pursued in relation to the organization of the peace establishment was a wise one: the laws on the subject show that they had in view the formation of a large and effectual army, when the circumstances of the country

should require it. He believed that there was never an army of its size capable of so much expansion as that of the peace establishment of the United States. As far as related to the staff of the commissioned grade of the army, they had, he thought, nearly arrived at perfection. But he could say with truth, that he believed the non-commissioned officers and privates of the army to be in a worse state than had ever before existed in America. The documents on which the committee had acted, were now before him. He had obtained from the Adjutant General's office a statement of the number of desertions amongst the non-commissioned officers and privates during the last three quarters of a year, and they amounted to 701. If this proportion should continue, the amount in one year would be 934; and it was to be remembered that these were enlisted chiefly from our own population. In deliberating on this subject, there were two modes which offered themselves to the committee to put a stop to this state of things: one by increasing the punishments now inflicted for desertion; and the other to restrain the soldier, by holding out inducements to him for a faithful performance of his duty, and to make him believe that the path of duty is the path of interest. In addition to this document, Mr. H. said, he was in possession of another, which went to show the amount of money drawn from the treasury, on account of desertions, by which it appeared that the sum of \$10,099 had been paid for apprehending deserters, and \$536 for the pursuit of those not taken.

The bill now presented contains two propositions; the first, in the 1st and 2d sections, providing a bounty for re-enlistment; the other in the 3d section, relates to increasing the pay of the non-commissioned officers of the army. The committee had adopted this plan in preference to that proposing an increase of punishment, and in doing so, they acted in accordance with what they thought would be the view of the Senate, and they were sure they acted in accordance with the feelings of the American people.

Mr. H. said, it would be proper to state the manner in which desertion had hitherto been punished. At the commencement of the American Revolution, America having had little or no intercourse with any other part of the world than Great Britain, in regard to desertion, had adopted the system of that country—the punishment was death or flogging, at the option of the court-martial. He was not aware what effect this kind of punishment had on the soldiers of the Revolutionary war, but whatever it might be, it could not form a criterion for us; for there were circumstances operating on the mind of the soldier in that war, such as extreme suffering in some instances, and the ardent attachment to the cause, which pervaded every class of society, which is not likely again to occur. After the peace, the articles of war prohibited courts-martial from inflicting the

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punishment of death, except when sanctioned by the Supreme Executive authority—an exception which prevented it from ever being recurred to. There then remained no other punishment but flogging. The smallness of our military establishment at that time created no difficulty in keeping the ranks full; but, when the difficulty which arose between us and the Indian tribes on the north-west frontier, created the necessity of a large military force, though no law was passed on the subject, on a recurrence to the advice of the Executive, sanctioned by the opinion of the Attorney-General, that, though war had not been declared by the Legislature, it existed in fact, and that the punishment of death might be inflicted by a *court-martial*—under Generals St. Clair and Wayne, this thing was often done. It was found impossible to restrain desertion by flogging, and death was often inflicted. In a plain adjacent to the town of Pittsburg, Mr. H. said, the spot could be pointed out where ten or twelve, or perhaps twenty men, had suffered death for desertion. This enormous waste of American blood raised a great commotion throughout the country, and notwithstanding the popularity of General Wayne, it was the occasion of strong remonstrance from the citizens to the Executive. The wisdom, and even humanity of the course pursued by General Wayne, was manifested by the result: for, from this period, few desertions took place, and a recurrence to capital punishment was seldom necessary. At the conclusion of the war, by the peace of Greenville, the right of inflicting the punishment of death no longer pertained to courts-martial. Nothing was done but flogging, which was carried to such an extent, as to create a very great dissatisfaction throughout the country. Immediately before the last war, Government thinking, and very properly too, that this mode of punishment would be the means of preventing the filling up of the army, repealed that section, and declared that stripes should no longer be inflicted. I feel considerable satisfaction in stating, that I am one of the officers who were consulted on that occasion, who gave an opinion favorable to the abolition of that disgraceful punishment.

Since the conclusion of the last war, the usual punishment has been what is called the ball and chain, and hard labor; and what has been the result of this? In one year there have been 984 desertions—it is surely time that some remedy should be applied. Will you again recur to the system of flogging, or will you again authorize the infliction of the punishment of death? The feelings of the American Congress are too strongly in unison with those of the nation, to recur to that, till the one which is recommended by the committee shall have been tried—one which is more lenient, and is addressed to the mind of the soldier. Such was the intention of the committee in reporting this bill. It has been supposed by some persons who have turned their attention

to the subject, that the first section of the bill which relates to the retention of a portion of the soldier's pay, would be sufficient to answer the desired end. There have also been some objections to it: for my colleague thinks it will have an injurious effect on the recruiting service. Alone it would not be sufficient, but taken in connection with the other sections of the bill, I trust will be found useful. My colleague asks, what is the motive which induces men to enlist in the army, and to a faithful performance of their duty? He says it is the pay. I allow that it is so with regard to the first enlistment; but an old soldier enlists from other and better motives. The only objection I could think of to the first section is, that, at the expiration of his period of service, he will have his pocket full of money, and would go home to spend it instead of re-enlisting. But, sir, it is the humane practice in the army to grant furloughs to the old and faithful soldiers. An old soldier, therefore, who has \$100 in his pocket, and wishes to re-enlist, would be allowed to go home and spend amongst his friends the money he has gained.

In regard to the second section of the bill, it is not only a measure of justice, but a measure of humanity, and I may add of economy, also. My colleague has asserted it will produce dissatisfaction amongst the soldiers of the army, where one man is paid more than another. Sir, there is not a service in Europe in which this system does not prevail; and in those services where this idea is most prevalent, there has been a more efficient and better conditioned army. England commenced a plan of this kind under the administration of Charles Fox, a man whose policy, wisdom, humanity, and whose excellence of character, are equal to any other that ever guided the helm of state. When this plan was first adopted, a small addition was made to the pay of the soldier; each soldier having served a certain time, was entitled to an additional penny a day, and for the second period, of two-pence a day; and this, however insignificant it may appear to us, is to the British soldier a matter of great importance. I have some knowledge of British soldiers, and whilst conversing with the prisoners of the British army, I could distinguish by the erect attitude and correct deportment, the pride they felt in being called veterans.

This plan has been adopted by every army in Europe. The value of an old soldier to an army, sir, is known to every military man. There is not an officer who has served in the army but knows that, for a considerable time after he has enlisted, a recruit is worth nothing. The money that is paid him, the clothes which are given him, and the arms which are put into his hands, and which are frequently destroyed, are so much loss to the Government. I have in my hand, sir, a calculation, made by an excellent officer in the army, Major Wool, from which it appears that, in consequence of the loss of arms, the expense of pro-

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visions, &c., each recruit, sent, for instance, to Green Bay, will cost eighty dollars. So that an old soldier, who will re-enlist, is worth eighty dollars more to the Government than a recruit, exclusive of the chance of desertion. To this may be added the pay and subsistence of the recruit till he arrives there, which will swell the amount to upwards of one hundred dollars.

Mr. CHANDLER said he believed that when the Senate considered what sort of men the ranks of the army were filled with, in time of peace, they would perceive how difficult it was to prevent desertion; for so long as such quantities of wild land remained, which is so easily obtained, it is impossible to induce men to enlist into your army, who have any thoughts of laying up any thing for themselves, those who do enlist in a time of peace, are generally a class of men, who enlist for the sake of the small amount of pay given, merely to supply them with something to drink, which is about all they wish. The object of the bill is to prevent desertion, and I don't know but what it will have the effect, for, if you stop one dollar and fifty cents a month from their pay they will not enlist, if they do not enlist they will not desert; but so long as your army is made up of such materials as are enlisted in a time of peace, they will desert, if enlisted; neither stoppage of pay, or appointing of chaplains, as suggested by the Chairman, will prevent it. I will, however, pass by the first section of the bill, and make a few observations upon the residue of it. With respect to the second section, which provides for increasing the pay of the soldier on his re-enlisting, Mr. C. asked, to what kind of men do you give this additional pay? Why to this same class of men whom you enlist in time of peace; and the Chairman of the Committee has just informed us, that in one year, about nine hundred of them out of less than six thousand, say one-sixth of the whole, have deserted, including thirty or forty non-commissioned officers; they enter your service with habits and morals not the most correct, and they are not generally bettered by being in the service. The bill proposes, after the soldier has served five years, to add one dollar per month to his pay if he re-enlists for five years more, and at the expiration of that five years, if he re-enlists to add to his monthly pay two dollars and fifty cents more, making three dollars and fifty cents per month more to this soldier, who is broken down by bad habits after ten or more years' service, than you give to the soldier who enlists at the commencement of a war, when your army is made up of a different class of men, men who enter it from far higher and better motives than those who enlisted in a time of peace. Those who enter the service at the commencement of a war, are men who have families and property to defend, men of correct habits, and after a few months' service one of them is worth three of those who have been fifteen years in service in time of peace; and I appeal to any officer

who has seen service, whether he does not find this to be the case. As to the third section of the bill, Mr. C. said, he agreed with the Chairman, that the pay of the non-commissioned staff was rather low, as also the first sergeant, and that they were a very important part of the army; but if the pay of a sergeant major and quartermaster sergeant, must be fifteen dollars, which he thought too high, he thought that the first sergeant of a company should not be more than twelve dollars; it would be more in proportion to the grade and the services performed, and quite as satisfactory. It may be well for gentlemen to remember when they make comparisons between the pay of the subaltern officers and the non-commissioned officers, that the latter are furnished with clothing by the Government in addition to their pay, while the former furnish their own clothing, which leaves less difference in their pay and emoluments than at first sight might appear.

The question then being on engrossing the bill for a third reading, was decided in the affirmative by yeas and nays, as follows:

YEAS.—Messrs. Barton, Benton, Berrien, Bouigny, Chase, Edwards, Ellis, Harrison, Hendricks, Holmes, Johnson of Ky., Johnston of La., Kane, King, Lloyd of Mass., McIlvaine, Marks, Mills, Noble, Robbins, Rowan, Seymour, Thomas, Van Buren, White, Woodbury—26.

NAYS.—Messrs. Bell, Chandler, Clayton, Cobb, Eaton, Findlay, Macon, Randolph, Ruggles, Smith, Willie, Van Dyke—12.

The bill was ordered to be engrossed for a third reading.

MONDAY, January 16.

Mr. HAYNE, from the Committee on Naval Affairs, made the following report:

"The Committee on Naval Affairs, to whom was referred a letter from Captain David Porter, of the United States Navy, 'requesting an investigation of charges contained in communications from Thomas Randall and John Mountain;' and to whom was also referred a letter from Thomas Randall, on the same subject, together with a communication from the Secretary of the Navy, covering the proceedings of the Court of Inquiry and Court Martial, in relation to Captain Porter, report:

"That they have had these several communications under consideration, and find nothing in the character of the transactions to which they relate, that requires the interference of this House.

"It appears that the case of Captain Porter has been submitted to the proper tribunals; and the committee do not feel themselves warranted in forming any opinion unfavorable to their decisions, or indulging any impression that their proceedings require revision. The committee consider it due alike to the preservation of a proper discipline and to the reputation of our officers, that appeals should not be encouraged from the decisions of the Military Courts. Under this view of the subject, and seeing no satisfactory reason for interposing the authority of the House in matters which have been finally settled by the competent authorities, the

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committee ask leave to be discharged from the farther consideration of the subject."

The report was read.

THURSDAY, January 19.

*Amendment of the Constitution—Election of President and Vice President—Direct vote by the people.*

Mr. BENTON, from the Select Committee, to whom was referred the several resolutions proposing amendments to the Constitution of the United States, made a report, in part, accompanied by the following joint resolution:

"Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following amendment to the Constitution of the United States be proposed to the Legislatures of the several States, which when ratified by the Legislatures of three-fourths of the States, shall be valid to all intents and purposes, as part of the constitution:

"That, hereafter, the President and Vice President of the United States shall be chosen by the people of the respective States, in the manner following: each State shall be divided, by the Legislature thereof, into districts, equal in number to the whole number of Senators and Representatives to which such States may be entitled in the Congress of the United States; the said districts to be composed of contiguous territory, and to contain, as nearly as may be, an equal number of persons entitled to be represented under the constitution, and to be laid off, for the first time, immediately after the ratification of this amendment, and afterwards at the session of the Legislature next ensuing the apportionment of Representatives by the Congress of the United States; or oftener if deemed necessary by the Legislature of the State; but no alteration after the first, or after each decennial formation of districts, shall take effect at the next ensuing election after such alteration is made. That on the first Thursday, and succeeding Friday, in the month of August, of the year one thousand eight hundred and twenty-eight, and on the same day in every fourth year there after, the citizens of each State who possess the qualifications requisite for electors of the most numerous branch of the State Legislature, shall meet within their respective districts, and vote for a President and Vice President of the United States, one of whom, at least, shall not be an inhabitant of the same State with himself, and the person receiving the greatest number of votes for President, and the one receiving the greatest number of votes for Vice President, in each district, shall be holden to have received one vote; which fact shall be immediately certified to the Governor of the State, to each of the Senators in Congress from such State, and to the President of the Senate. The Congress of the United States shall be in session on the second Monday in October, in the year one thousand eight hundred and twenty-eight, and on the same day in every fourth year thereafter; and the President of the Senate, in the presence of the Senate and House of Representatives, shall open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for President shall be President, if such number be equal to a majority of the whole number of

votes given; but if no person have such majority, then a second election shall be held on the first Thursday and succeeding Friday in the month of December, then next ensuing, between the persons having the two highest numbers for the office of President; which second election shall be conducted, the result certified, and the votes counted, in the same manner as the first; and the person having the greatest number of votes for President, shall be the President. But if two or more persons shall have received the greatest and equal number of votes at the second election, the House of Representatives shall choose one of them for President, as is now prescribed by the constitution. The person having the greatest number of votes for Vice President, at the first election, shall be the Vice President, if such number be equal to a majority of the whole number of votes given: and if no person have such majority, then a second election shall take place between the persons having the two highest numbers, on the same day that the second election is held for President; and the person having the highest number of votes for Vice President, shall be the Vice President. But if two or more persons shall have received the greatest, and an equal number of votes in the second election, then the Senate shall choose one of them for Vice President, as is now provided in the constitution. But when a second election shall be necessary in the case of Vice President, and not necessary in the case of President, then the Senate shall choose a Vice President from the persons having the two highest numbers in the first election, as is now prescribed in the constitution."

The resolution was twice read, and made the special order of the day for Monday, the 30th inst.

Mr. ROWAN of Kentucky, said, as this was a subject in which the dearest interests of the people were vitally involved, he should wish a large number of this Report to be printed, to be distributed amongst the people of the Union, that the Senate might, by its diffusion, have an opportunity to learn their sentiments, and be enlightened by their wisdom on the subject. Whether considered with regard to the great interest which the subject possessed, or to the great ability with which it had been discussed, it merited that the highest number should be printed which it was customary to print of interesting documents, and he moved that three thousand be printed;

Which motion was carried.

MONDAY, January 23.

*Case of Commodore Porter.*

On motion of Mr. DICKERSON, of New Jersey, the Senate proceeded to the consideration of the following report of the Committee on Naval Affairs, made some days ago:

"The Committee on Naval Affairs, to whom was referred a letter from Captain David Porter, of the United States Navy, 'requesting an investigation of charges contained in communications from Thomas Randall and John Mountain;' and to whom was also referred a letter from Thomas Randall, on the same subject, together with a communication from the Secretary of the Navy, covering the Proceedings of the Court of Inquiry and

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*Discriminating Duties.*

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Court Martial, in relation to Captain Porter,' report :

"That they have had these several communications under consideration, and find nothing in the character of the transactions to which they relate, that requires the interference of this House."

WEDNESDAY, January 25.

*Discriminating Duties.*

The Senate proceeded to the consideration of the following bill, reported by the Committee on Commerce, "in addition to an act, entitled 'an act concerning discriminating duties on tonnage and impost.'

"*Be it enacted, &c.,* That upon satisfactory evidence being given to the President of the United States, by the Government of any foreign nation, that no discriminating duties of tonnage or impost, to the disadvantage of the United States, are imposed or levied in the ports of the said nation, upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise, imported in the same, from the United States, or from any foreign country, the President is hereby authorized to issue his proclamation, declaring that the foreign discriminating duties of tonnage and impost, within the United States, are, and shall be, suspended and discontinued, so far as respects the vessels of the said foreign nation, and the produce, manufactures, or merchandise imported into the United States in the same, from the said foreign nation, or from any other foreign country; the said suspension to take effect from the time of such notification being given to the President of the United States, and to continue so long as the reciprocal exemption of vessels belonging to citizens of the United States, and their cargoes, as aforesaid, shall be continued, and no longer."

Mr. LLOYD, of Massachusetts, said, the object of the bill was to clothe the Executive with the authority to proffer to any foreign nation who would reciprocate the same liberal conditions to the United States, an entire equality of commercial intercourse; in other words, that the vessels and merchandise of foreign powers, agreeing to this condition, should be admitted into the ports of the United States on precisely the same terms, and be subject to no other or higher rates of duty, whether of tonnage or of impost, than the vessels and cargoes of the citizens of the United States. This, it would be perceived, when acceded to, amounted to a complete removal of the system of discriminating duties with the parties agreeing to it. The report, he said, which had been made by the Committee of Commerce, laid on the tables of the members of the Senate, would give the general reasoning on the subject, and more especially would the minute statements accompanying it, furnish precise data, on which gentlemen could correctly form their opinions as to the expediency of adopting the course of policy recommended, and of passing or rejecting the bill. Most gladly, he said, he would leave the subject on this ground, but he had been informed, in the position in which he stood, as Chairman of the

Committee, that something more was expected from him; and that other elucidations of the bill should be given. These expectations he would endeavor, then, as briefly as in his power, to comply with, and, in doing it, attempt to trace the origin, progress, and effect of the discriminating duties, adverted, in his remarks, to three or four marked eras in the commercial history of the United States; showing the relative amount of the foreign trade at the different periods referred to; the proportion of it enjoyed by the citizens of the United States, and that part of it occupied by foreign navigation; also, the present state of this trade, and the amount of it exhibited at the date of the latest returns from the Treasury Department in 1824. He would then advert to the effect to be produced by the passing the bill, on the commerce of this and other countries, and leave it to the better judgment of the Senate for its decision.

The discriminating duties, he said, were coeval with the Government, being among the first acts after its adoption; the effect was salutary and beneficent in a high degree; at this time the navigation of the United States was in not only a depressed, but nearly a prostrate state. We had, before the adoption of the Federal Constitution, scarcely recovered from the impoverishment and exhaustion of the war for Independence; we had no common head to protect our rights or property in foreign countries; alien duties abroad were laid on our navigation, which we had no power to retaliate; for, if one State retaliated these duties, and the others did not follow her example, her situation was only changed from bad to worse—as it drove the little foreign trade she might have from her ports to those of the States where no duty was imposed. The consequence was, we could not compete with foreign navigators; they taxed our vessels, but we could not tax theirs; and this inequality was decisive against us; the consequence in a little while would have been, that the whole, or nearly the whole carrying trade of the United States, even for our own products, would have been in the hands of foreign navigators. At this period the General Government was most happily adopted, and the discriminating duties were imposed; the effect was electrical; the merchants and navigators of the United States saw the whole revenue of enactments of the Government based upon the interest with which they were most nearly connected; they felt they had a Government, not only able, but willing, to protect them; and that the countervailing duties would place them in some degree on a footing with other nations; from this moment the navigation and commerce of the United States most rapidly expanded, increasing in a ratio unexampled in the records of any other people. In 1789, the whole tonnage employed in the foreign commerce of the United States, was only 234,000 tons, of which more than 100,000 was in foreign navigation; but in the short space of 17 or 18 years the tonnage employed in the foreign trade of the United States had swelled to no less an

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amount than 1,200,000 tons, giving an increase, in this short space, of more than five fold, of which not nearly one-half, as in 1789, was in foreign navigation, but only 86,000 tons, out of 1,200,000 tons; giving an increase of the American tonnage, nine times over—it having increased during this time from about 120,000 tons to 1,100,000 tons. This was the second period to which he should allude. But this highly gratifying state of prosperity for the commerce and navigation of the United States, he could not contend, arose exclusively, or principally, from the imposition of discriminating duties; nor did it arise mainly from them; it arose from other and more powerful causes; from the political events of the times; from the wars of the French Revolution, which soon followed—which continued for twenty years, embracing in their vortex within that time, all the navigating States of Europe; deranging and overturning their commercial systems, and, when engaged in war, sweeping all their shipping from the ocean, with the single exception of Great Britain, whose naval preponderance enabled her to protect her mercantile marine. In this state of things, the commerce of the world was almost entirely thrown into the hands of American merchants and ship owners; and this, to the greater extent, was the source from which the unexampled success of American commerce and American navigation had arisen.

At this period, he said, the two great combatants of Europe were struggling for their political existence; and a great object on each side undoubtedly was, to gain powerful auxiliaries, or allies, in the contest. This motive, increased by a jealousy of the unrivalled prosperity, and growing power of the United States—and perhaps also by something of cupidity to reap a part of the profitable business they were prosecuting—probably led to that series of wrongs and insults, captures and plunderings, to the amount of not far short of one hundred millions of dollars, with which the United States were visited; and which, from necessity, first led to remonstrances, which produced nothing; to measures of restriction, and withdrawal from the ocean, which were scarcely more efficient; and, finally, eventuated in a war with the more powerful of the maritime belligerents.

These two eras, he said, for a reason before assigned, would not test the operation of the discriminating duties. But he had now reached the period when the evidence to be derived from their existence could be perceived, and their influence estimated. The war with Great Britain was terminated by the treaty of Ghent, in December, 1814; the peace of Europe had been secured not long before, by the treaty of Paris. The Temple of Janus was now closed, and each nation would thereafter re-occupy its former commercial habitudes, resume its colonial relations, and cultivate its own resources to the extent of its means and ability.

As soon as this state of things was known in the United States, and intelligence had been re-

ceived of the treaty of Ghent, the Government of the United States, accommodating itself to the change of circumstances, and acting up to those liberal principles of equal trade, which the late President of the United States, a few years since, in his message to Congress, correctly stated had ever characterized its proceedings, from the first commercial treaty it had formed, that with France, in 1776—passed the act of March 8, 1815, repealing the discriminating duties on vessels and merchandise, so far as regarded the produce and manufacture of such foreign nation, to which the vessel belonged, as should abolish, in their ports, all discriminating duties on American vessels and merchandise. This act, at the time, attracted no great attention; it was considered, in some degree, as embracing an abstract proposition, which might or might not be realized; but shortly after, to wit, in July, 1815, of the same year, a convention was formed with Great Britain, by which it was agreed that the same, and no other or higher rate of duties, should be payable on the vessels of the respective countries, entering the ports of the other, with their cargoes, being of the growth, produce, or manufacture, of either, than on their own vessels when entering such ports.

This was reducing theory to practice; the American ship owners and navigators became somewhat alarmed; they very naturally concluded, that, as a large mass of our imports were of British manufactured goods; as these were procured from, and shipped by British manufacturers or merchants; that, if British ships could come into the ports of the United States, precisely on the same terms as American ships, that a fellow-feeling between the British merchant and ship owner would arise, and that the greater part, if not the whole, of the importations from Great Britain to the United States, would be made in British shipping, to the exclusion of American navigation; such also was the impression of the British ship owners; for they prepared to put some fine ships into the trade; two, he believed, went into the trade with Boston; our merchants knew British ships could be constructed on about the same terms as American ships; but, as they last longer, in the end they might be cheaper. The British oak being more durable than the American oak—he did not mean the live oak of the country, which is the best material for ship building in the world—but it is too scarce, too costly, and perhaps too heavy, for the purposes of mercantile navigation. They also knew, that, in time of peace, the wages of American seamen were one-third, or one-half higher than the British; that, although provisions were generally cheaper in the United States than in Great Britain; that as we gave our seamen more indulgences and comforts, especially in port, that the cost of subsistence was also probably dearer. These were disadvantages the American ship owner knew he had to contend with, but he did not shrink from the contest; he breasted himself to meet it: also put fine ships into the trade, taking more care than



usual to select active, vigorous, spirited young men, to command them, who would never strike a topsail while a mast could carry it. The result was, before the end of a twelve-month, it was perceived the American ship would perform nearly three trips to the other's two; and that goods, shipped by the former, would be received more frequently, and enable the importers better to supply the market than by British ships; the consequence of which was, the latter quitted the trade, and we have now the whole of it in American vessels.

This, he said, was to his mind conclusive; and this was the period when the first suspension of the discriminating duties had taken place. He would trace further the operation of the act of Congress of 1815. The convention with Great Britain was for four years. In 1818, it was renewed for ten years, and is now in existence. In that year a treaty was also formed with Sweden, embracing the same provision, and for the same period. This principle has been still further extended, by diplomatic arrangements with Russia, Prussia, Norway, Oldenburg, the Hanse Towns, France, and Sardinia. Negotiations, it is understood, are depending, in relation to it, with some other of the powers of Europe, and the States of South America, and will, probably, issue in the same result.

This, then, is the third period, 1815-'16, and the principal one, in connection with the next era, or 1824, on which a correct estimation may be formed of the effect of the discriminating duties. It was a time of peace, and they were unaided. In 1816, the whole amount of tonnage employed in the foreign trade of the United States, was 1,800,000 tons; of which 258,000 were in foreign navigation. Part of this had to come in under the disadvantage of the discriminating duties. What did not come in on equal terms with American shipping, had this quantity of foreign navigation increased in 1824, when the tonnage duty had been taken off from the vessels of nearly all the navigating powers of Europe? Let the same record answer. The amount of tonnage employed in the foreign trade of the United States, in 1824, the latest to which we have returns, had fallen off, owing to the causes before mentioned; but it amounted to 985,000 tons. What proportion had foreign ship owners of this, when relieved from the tonnage duties? Not nearly one-half, as in 1789; not more than one-fifth, or 258,000 tons, as in 1816. No, sir, they had not a tithe, a tenth part, having only 88,000 tons out of 985,000; and this is decisive: it shows that, on a fair field, and a clear stage, your merchants and navigators, on equal terms, are able successfully to compete with any nation on the face of the earth, with or without discriminating duties. This, however, is only the statement of the tonnage employed: it does not show the amount or value. Pursuing the inquiry on this head, we have authentic information at command. It is to be derived from the annual report of the Secretary of the Treasury; and, notwithstanding

ing the predictions which have been made of the general distress which was to pervade the United States, in consequence of the balance of trade being against us; the high price of exchange; the exportation of specie, and the sale of American stocks in Europe,—so far is this from being the case, the country, generally, is in a state of great prosperity. Specie, where the laws have their force, and credit is good, hardly bears any premium. American stocks stand higher than any other foreign stock in European markets; and the portentous balance of trade, so far from being against us, is, in fact, a million of dollars in our favor; the exports, according to the Secretary's account, being ninety-two millions of dollars, and the imports only ninety-one millions. This spectre, he hoped, had vanished forever; and this account was the more cheering, as it appeared that, of these ninety-one millions, eighty-six millions were transported in our own navigation; showing the sympathy which exists between the tonnage and the value. This result, he said, if it did not give every thing that could be desired, as there was a little residuum still possessed by foreign navigators, gave, as he believed, if foreign nations were to have any concern in it at all, as much as any rational man could either anticipate or expect.

MONDAY, JANUARY 30.

*Distribution of Public Money.*

Mr. DICKERSON rose to submit a resolution. He said, as, by the report of the Secretary of the Treasury, it appeared, that, after the year 1830 the whole amount of the public debt, on the principles assumed in that report, would stand at about forty millions of dollars, and as our revenues upon commerce are increasing in a way to leave large surpluses, beyond the exigencies of the General Government, it has been deemed important that such surplus should be appropriated to the purposes of education and internal improvement; but as these improvements, by the arm of the United States, meet with constitutional as well as other objections, the only way to obviate these difficulties, and at the same time serve the public interest, would be to distribute these surplus funds to the different States and Territories for these important purposes, to be appropriated according to their discretion. The sums to be distributed may be taken in part from the sinking fund—in part from the retrenchments in our present expenditures—and in part from future excesses of revenue above the present receipts. Mr. D. concluded by offering the following resolution:

*Resolved*, That provision ought to be made by law to authorize and require the Secretary of the Treasury to distribute, annually, to the States and Territories of the United States, three millions of dollars for the purposes of education and internal improvement—to be apportioned among the States and Territories according to the rate of direct taxation.

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*Repair of Post Roads in Mississippi.*

[SENATE.]

WEDNESDAY, February 1.

*Death of Senator Chambers.*

Mr. KING, of Alabama, rose, and said it had become his painful duty to announce the death of his honorable colleague, HENRY CHAMBERS, who died on the 25th of last month, while on his way to the Seat of Government, to enter on the discharge of his duties in the Senate.

Mr. KING said he would not attempt the eulogy of the deceased; but Alabama would long have cause to regret the loss of the valuable services of one of her best, and most enlightened, and most useful citizens: and his numerous friends would long deplore the loss of one of the best of men. Without further comment, Mr. K. said he would offer the following resolution:

*Resolved*, That the members of the Senate, from a desire of showing every mark of respect due to the memory of the honorable HENRY CHAMBERS, deceased, late a Senator from the State of Alabama, will go into mourning for him, one month, by the usual mode.

The resolution having been agreed to unanimously, Mr. KING again rose, and said that no case had occurred in the Senate, precisely similar to the present, but it was well known that the other House had thought proper to adjourn, on learning the death of one of its members while on his way to the Seat of Government. Mr. K. therefore moved the following additional resolution:

*Resolved*, That, as an additional mark of respect for the memory of the honorable HENRY CHAMBERS, the Senate do now adjourn.

The resolution was agreed to, *nem. con.*

TUESDAY, February 7.

*Maison Rouge Claim.*

The Senate took up the bill "to authorize the legal representatives of the Marquis de Maison Rouge, and those claiming under him, to institute a suit against the United States by petition, in the courts of the United States, to try the validity of their title."

[This case has been repeatedly before Congress in one shape or other, has been often discussed with great attention, and is familiar to most readers. The claim is for two or three hundred thousand acres of land, in Louisiana, and the title rests on the validity of a Spanish grant to De Maison Rouge. The claim has passed from hand to hand, and is now understood to be owned by Mr. S. Girard, of Philadelphia.]

On this bill a debate took place, which continued more than two hours, comprehending, in its scope, the history of the claim, the propriety of giving to an individual the new privilege proposed by the bill, the other modes by which it was suggested the title might be ascertained, &c. Those who advocated the bill, were Messrs. VAN BUREN, BERRIEN, ROWAN, and JOHNSTON of Lou.; and those who opposed

it, were Messrs. RANDOLPH, TAZEWELL, HOLMES, and EATON. In the course of the debate, Mr. RANDOLPH moved the indefinite postponement of the bill; and, on the question being taken thereon, it was decided in the negative, as follows:

YEAS.—Messrs. Barton, Bell, Chandler, Dickerson, Eaton, Edwards, Hayne, Lloyd of Massachusetts, Macon, Marks, Randolph, Tazewell, and Woodbury—13.

NAYS.—Messrs. Berrien, Boulogny, Branch, Chase, Clayton, Cobb, Ellis, Findlay, Hendricks, Holmes, Johnson of Kentucky, Johnston of Louisiana, Kane, King, Knight, McIlvaine, Mills, Noble, Robbins, Rowan, Ruggles, Sanford, Seymour, Van Buren, Van Dyke, White, Willey, and Williams—28.

The question then being on certain amendments reported to the bill by Mr. VAN BUREN, from the Judiciary Committee, a motion was made to adjourn, which prevailed.

MONDAY, February 18.

*Repair of Post Roads in Mississippi.*

The Senate proceeded, as in Committee of the Whole, to the consideration of the bill "appropriating a sum of money (\$15,000) for the repair of the post road between Jackson and Columbus, in the State of Mississippi."

Mr. JOHNSON, of Kentucky, (Chairman of the Committee on the Post Office and Post Roads,) explained the object of this bill, which appropriated \$15,000 for the repair of the post road, in the Indian country, between Jackson and Columbus, in the State of Mississippi, to be expended under the direction of the Postmaster General. A similar bill had, he said, passed the Senate, during the last session of Congress, but failed for want of time, in the other House. The committee who had reported the bill, had received ample information, from the Postmaster General, and from other quarters, of the vast importance of this road, of its being out of order, and of the necessity of the appropriation at present asked for. The road runs through the Indian lands, over which no State has any control, therefore would not involve any constitutional question. In its present state, the road is so bad that the communication is very precarious, and sometimes impossible.

Mr. CHANDLER, of Maine, said he should be unwilling to lay out any money within the State of Mississippi, for making a post road, especially as the writer of a statement (read by the Secretary) on which the committee seemed to rely, was doubtful whether this was the best road that could be had. In the State of Maine, when they made a road passing through lands owned by Indians, they were under the necessity of doing it themselves; and he thought the State of Mississippi was as well able to make its own roads as they were in the State of Maine.

Mr. KING, of Alabama, said the State of Mississippi had not the power to make this road. The road runs through the Indian country,

over which the State of Mississippi had no control. The appropriation asked for is not more than sufficient to accomplish the desired purpose. They had formerly made an appropriation for the object contemplated by this bill—how that had been expended he could not say. The committee had had the subject under their consideration; they had communicated with the Postmaster General, and Mr. K. said he was not disposed to delay the passage of the bill, as from the great confidence that was placed in the Postmaster General, they might be satisfied he would not require a larger sum than would be sufficient to put the road in a proper situation for the transportation of the mail.

Mr. ELLIS, of Mississippi, said the object proposed was, that this route should be so improved as to enable the mail to be transported with safety from Jackson to Columbus, in the State of Mississippi, and this could not be effected unless this appropriation was made. The water-courses which intersect this road in various directions, require bridges, the swamps also require causeways, that post carriages may pass in security. He knew, from an experience of several years, that the mail arrived at Natchez and New Orleans in a very wretched and torn condition; and merchants complain that their losses are immense, in consequence of the negligence of Government in this respect.

The gentleman from Maine had said that, because this bill did provide for opening roads in Maine, that it should not be done in the present instance; but this road has already been opened by the Government of the United States, and it is now proposed to put it in such a state, that the mail might be transported in covered carriages to Natchez and New Orleans; this he thought was an object well worthy the attention of the Government, and he hoped no opposition would be made to the passage of the bill, as the question did not involve the constitutional power of Congress in regard to roads, &c.

Mr. CHANDLER could not see why the constitutional question would not be brought up as much in this case as in making any other road—if the committee were in possession of no further information on the subject, sufficient proof had not been produced to show that this road was the best possible road that could be had; and he was not willing that the United States should lay out any money on it. If any were to be laid out, he admitted there was no officer in whom he would place more confidence than in the officer at the head of the Post Office Department. Let the State of Mississippi make the road, and the United States would have no objection to giving them all the authority they could require.

Mr. JOHNSON, of Kentucky, said this was not a road belonging to a State, but was one in which every part of this nation was interested in keeping open. All communication, by land, from Boston, New York, Philadelphia, Baltimore, all the great cities on the seaboard, and all the towns and villages in the country north

of the southern point of our Union, must pass on this route. It was a road opened by the United States, according to a treaty stipulation with the Indians; and because it served to connect the United States together, they had appropriated seven or eight thousand dollars for the purpose of opening it, and the present appropriation was required to put it in a state of repair.

Mr. CORB, of Georgia, was perfectly satisfied of the expediency of opening this road, if it were to be considered merely as a matter of expediency—but he concurred in the opinion of the gentleman from Maine, that, if the constitutional question was not involved in this bill, it would not be involved in any one. Did the circumstance of this road passing through the Indian territory, change the principle at all? In what way does it? [Mr. JOHNSON, of Kentucky, said, by treaty stipulation.] A treaty stipulation gives to the United States no other powers than are conferred on the Government by the constitution. Suppose the Government of the United States stipulated by treaty with Great Britain to do a thing it was not constitutional to do, was a power thereby communicated to the Government to do that thing? Mr. C. said he did not like this plan of the United States acquiring power by stipulations of treaty. It was a dangerous doctrine. It seemed to him that when they came to view this question fairly, it involved all the great principles as to the power of this Government to make roads and canals. Supposing they were to take the reason assigned by gentlemen in support of the present measure, that this road was necessary for the purpose of facilitating the transportation of the mail. In the route from Baltimore, somewhere on towards Philadelphia, it was just as necessary that the road should be repaired; the mail is obstructed almost daily on that route for the want of a proper road, and in some weather it is almost impossible to get on at all; and was it not just as expedient to have the route from Baltimore towards Philadelphia repaired, so as to facilitate the transportation of the mail between those two cities, as it was to have a road through the Chickasaw or Choctaw territory, to facilitate the transportation of the mail between New York and New Orleans? Certainly it was. Mr. C. said he should like to see which was the clause in the Federal Constitution under which they claimed authority to make this road through the State of Mississippi; he could not see any reason why this circumstance of the road passing through the Indian country should change the principle in the smallest degree, or confer any new power on the General Government. His ideas on this subject, Mr. C. said, he had occasion to submit to the Senate some time ago, and it was not his intention now to go into any remarks that would make him repeat what he had advanced. There was no power in this Government to make this or any other road through the States.

Mr. ELLIS said the road did not pass through

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one-seventh part of the State of Mississippi, and it was impossible for the State Government of Mississippi to have any authority over those lands till the title to them was extinguished. The gentleman seemed to suppose that the great power which had so often been controverted in that House was now about to be advocated by the friends of the bill. Mr. E. said he was not about to advocate it, nor to indicate an idea of this kind, that this Government possessed the power to establish a road, or to cut a canal, through the several States, without their approbation; but the power does exist in the Congress of the United States, under the existing state of things relating to the Indian country within the several States, to establish roads, in the exercise of the provisions established by the Federal Constitution.

Mr. EATON, of Tennessee, said a treaty had been entered into in 1801, between the United States and the Choctaw Indians. The question of State rights had not then arisen, and the Government of this country was in the hands of Mr. Jefferson. Under such an administration, no attempt would have been made to enter into a treaty with a distinct sovereignty, that went to invade the principles of the constitution. By the second article of that treaty, the Indians gave their consent that a wagon road should be constructed through their lands, and if the idea was a correct one, that to make such a road was unconstitutional, was it not strange that the Senate should not have conceived this idea in 1801, or, if they did conceive it, that they should have acted as they did. Mr. E. said, a road had been made from the State of Georgia to the State of Tennessee, which was at present the main highway between these two States. A road had also been made through Alabama to Fort Stoddard, and the road which was at present the subject of discussion, was considered in this House, and an appropriation made for it. Ever since this Government had existed, Mr. E. said, they had proceeded on the principle that the Indians are a distinct sovereignty; it was an anomaly that one sovereignty should exist within the orbit of another, but they always had proceeded on this principle, and if they had any right to interfere with them, why did they proceed with them in the character of sovereignties? Mr. E. was present when the Postmaster General made an inquiry of the mail contractor for this section of the country, as to the state of the road, and the answer was, it is almost impassable. The principal part of this road was opened in 1801, and the portion for which they were now about to make an appropriation, was opened some years ago. It is against the religious principles of an Indian to work in any way, and the consequence is, that the roads through their country are worse than elsewhere. If there was any force in the objection urged by the gentleman from Georgia, at least so far back as 1801, something would have been thought about it in the Senate, when they entered into this treaty with the Indians;

by the second article of which, privilege is granted to the United States to open a road through their country.

Mr. CHANDLER had no doubt the road wanted repairs; but the treaty announced nothing more than that the United States had extinguished the Indian title to that portion of the country. If the State of Mississippi had no jurisdiction over the land, let them come to Congress and ask for it.

Mr. EATON contended there was no cession of property, on the part of these Indians, by the provisions of this treaty; there was not even a cession of sovereignty. They, in their sovereign capacity as Indians, yielded their consent to the United States to open a road. The United States could not give the State of Mississippi any sovereignty over it.

Mr. HOLMES, of Maine, observed, that the Indians were considered as sovereign within the States wherein they reside, unless the title and jurisdiction are extinguished. We are in this singular predicament. The United States is a great wheel; there are twenty-four little ones within it, and there are several others within each of these little wheels. If the United States have no right to make a road through either of these sovereignties, and the Indians will not make a road, it follows that we are to have no road. Mr. H. said he did not perceive the force of the constitutional objection bearing on that part of the State that is under the jurisdiction of the Indians. The State cannot exercise its laws; it cannot administer justice; its laws could not reach the Indian country. The State could not lay out the road through the Indian country, unless they legislate for the Indians, and consider them as citizens of the State. There might arise a very grave question out of all this, whether Indians, within the limits of an individual State, can be considered as sovereign power, acting with and negotiating with the United States. The Constitution of the United States, in apportioning the Representatives among the several States, in that enumeration, says, "and excluding Indians, not taxed, three-fifths of all other persons." The constitution contemplates Indians not taxed as not coming within the power of the Government of the United States. But there is still another question behind that; the question whether the State has the power to tax the Indians within the limits of that State. Until they have done that, till they consider the Indians as subject to their laws, so long will they legislate for themselves, and the State jurisdiction will not extend to them, and they will have a control over the territory, exclusive of the State. How, then, would this constitutional objection apply? It was contended that we had no right to exercise jurisdiction over a road of our own making, within the limits of a sovereign State. The reason of this was, that the State had reserved to itself this jurisdiction, and had never given it to us by the constitution. Mr.

H. said he understood this treaty was made before that State became a State; the stipulation was made by the Indians to the United States, and the United States had the power to stipulate with the Indians and to receive stipulations from them. Could the State, by being incorporated into the Union, do away with any of those stipulations previously made, and which, at the time of making them, they had a right to make? The compact was made by powers competent to contract, by which a road was to be made through this identical territory. If this compact is done away, by admitting the State of Mississippi into the Union, then that goes for nothing.

Mr. WOODBURY, of New Hampshire, observed, that the State of Mississippi could not tax the land, because the land was exempted from taxation—it belonged to the United States—it was Congress alone that could tax it. When roads passed through lands owned by individuals in Mississippi, the State did not ask Congress to interfere—they taxed the land. But, when roads passed through the United States lands in Mississippi, they taxed them by asking for a grant from Congress; and, the question was, Mr. W. said, whether Congress should make that grant, when it was so much for the public benefit?

Mr. CONN was sorry he did not see this question in the same point of view as the gentleman from Maine, (Mr. HOLMES,) and he would put this question to the gentleman: To what clause in the Federal Constitution did they trace the power of making this road? The gentleman from Tennessee had supposed his objections to be, that it was an invasion of State rights. Mr. C. said, whenever they exercised a power, which was not authorized by the constitution, it was an invasion of the rights of the States or the rights of the people. The great objection he had to adopt these measures was, that it was a usurpation by the Federal Government, of power not conferred on it. He denied that any thing could confer a power on the Federal Government, but the Federal Constitution; and this brought him again to the question put to the gentleman from Maine—to what clause in the constitution did he trace the power to make or repair this road? Would the gentleman say it was from the treaty-making power? Mr. C. admitted, that the Government of the United States, so long as the territory was theirs, perhaps might, under the clause of having a right, exclusively, to legislate for the territory, adopt ways and means to have a road made through the territory. When this treaty was made with the Chickasaws, it was the Territory of the United States, and the Government at that time proceeded to open the road, precisely on the same principle that it had done in the territory of Florida, or in Michigan, or in any other Territory, before being admitted into the Union. Mr. C. said his idea was, that the moment a State was admitted into the Union, that portion of the sovereignty of

the United States which could be exercised under the constitution, and which might be defined to be the right of jurisdiction, ceased, except in cases specially provided for by the Federal Constitution. Sovereignty consisted, he thought, in something more than the right of soil. The mere right of soil is a very small portion of the sovereignty of a nation. He admitted that, till the lands were sold by the United States, they had the right of soil; but, as soon as the State of Mississippi was admitted into the Union, the whole right of State jurisdiction accrued to that State, so far as regarded the exercise of any sovereignty, except what was specially conferred by the Federal Constitution. The United States have no other jurisdiction in the State of Mississippi, than they have in the State of Georgia or Maine.

As to the expediency of this measure, Mr. C. admitted the road might be very necessary, and the gentleman from Maine stated this difficulty: The State of Mississippi cannot, or will not; the Indians will not; the General Government cannot make it; therefore there must be no road. Concerning the road in Maryland, to which he had before adverted, Mr. C. said, one portion of the inhabitants of Maryland and part of Delaware, wished to have it in one direction, and another part wished it to be in another. The upper portion of the people are not rich enough to make it themselves, or have not the power, and they apply to Congress for an appropriation to repair the upper road; here is a case presented to us: they want to make the road where it ought to run, and where the mail is subjected to all those inconveniences to which it is subject in the road which we are now discussing. Mr. C. said, his idea was, that whatever power the United States could have exercised over the territory, in opening this road, the moment the State of Mississippi was admitted into the Union, so far as regards the right of jurisdiction over this road, it devolved to the State. Look to the treaty, said Mr. C., and see whether the Indian title is not extinguished to this portion of land; and all gentlemen would admit that the moment the Indian title was extinguished, the jurisdiction would accrue, over the lands thus extinguished, to the State. Mr. C. then quoted the treaty—"and the same shall continue forever a highway for the citizens of the United States;" and contended that it was as clear a renunciation of jurisdiction by the Indians as ever was made; they gave up their power; they ceded to the United States the right of making this road; and from the moment the treaty was ratified, the power was vested in the United States, because it was a territory; and so soon as the State of Mississippi came into the Union, this jurisdiction over the road, which belonged to the United States, as sovereign over the country, whilst it was a territory, devolved on the State.

Mr. HOLMES said, he felt a little alarmed when he saw his friend from Georgia rise, and

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ask the question which he had put to him, with so much confidence—and if he could not put his finger on that clause of the Constitution of the United States which authorized the appropriation for this road, he would not make it. He was not one of those who believed that they might obtain that power by construction, which was not plainly and unequivocally granted in the instrument. He was not an advocate for constructive or implied powers. He understood that, at the time this Territory belonged to the United States, they made a compact with the Indians that a road might be made, which should not be interrupted. Afterwards the State of Mississippi was admitted into the Union, and the road had not been made, and now they applied to Congress to make this road. This was the clause of the constitution on which he relied for the power to make it: "New States may be admitted by the Congress into this Union, but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress." The main proposition here, Mr. H. remarked, was connected with another clause: "The Congress shall have power to dispose of, and make all needful rules and regulations respecting the Territory or other property belonging to the United States: and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular State." This, Mr. H. said, was all to be taken into consideration, referring to the Territory that then was to be carved into States, and the Territory that should afterwards remain. The last clause was a very important one; "new States may be admitted into the Union." Connect the last clause with that, "nothing in this constitution shall be so construed," &c. Why was it inserted? "New States may be admitted into the Union," but the property which was reserved for the Territories was intended, some of it, to belong to the States, when they should become States. This clause was intended to preserve all the rights of the United States and of the States, when they were admitted into the Union, and all the stipulations previously made between the United States and the Territories of the United States, were to be firm and inviolable, in this latter clause of this article of the constitution. If that were the case, and Mr. H. said he could conceive no other reason why this clause should be inserted, he would recur to the fact, that the right of the United States to make a road within the Indian country, had been stipulated for, and had been vested in the United States, before that State came into the Union. The State afterwards came into the Union, and there was nothing by that admission that would go to prejudice the claim of the United States to make this road, or the claim of the State to any thing that was granted to it as a Territory

of the United States. The stipulation was fairly made and never rescinded, and was reserved by the express clause in the constitution to be valid, and effectual. Mr. H. thought, on this point, from this clause of the constitution, the power might be fairly inferred.

Mr. JOHNSON, of Kentucky, referred to the second volume of the Laws of the United States, and cited, as cases in point, in answer to Mr. COBB, the roads which had been made by the United States, from Fort Hawkins, in Georgia, and Fort Stoddart, in Alabama. These precedents he thought conclusive, as to the power to make the road now under discussion. There had been an appropriation for opening this road, and they now asked for an appropriation for repairing it. The appropriations for opening this road, had been made under the administrations of Jefferson, Madison, and Monroe; and, if his friend concurred with him as to the *expediency* of the measure, and it was not to be doubted, where repeated appropriations had settled this question, he hoped he would permit the constitutional question to rest, till he came to matters of greater moment, when it would give him more pleasure to hear him, and he always heard him with pleasure on that great and vital question. On the present occasion, Mr. J. did hope that, if the Senate believed in the propriety and necessity of the measure, they would make the appropriation, after what had been stated, by way of matter of fact, on the subject.

Mr. COBB remembered the circumstances alluded to by the gentleman from Kentucky; he was a member of Congress at that time, and he voted against the appropriation for the road from Fort Hawkins, although it was in Georgia. He hoped the time was not yet come when the Senate were to be tied down by a precedent of such a character as that. He could refer the gentleman to other precedents. In that same book, he would probably find a certain law, called a sedition law: the gentleman would certainly not deny that that law was unconstitutional; if he admitted that, it was no precedent to settle a question of constitutionality, and it would be still lawful for them to object to another sedition law, on the ground of its unconstitutionality. The gentleman would also find a law for the making of the Cumberland Road, which originated during the good old days of Jefferson. Mr. C. said, in his opinion, that also was unconstitutional, and, so far as regarded himself, it would form no precedent to him, and he should make the same reply in regard to every other statute that the gentleman should bring in support of this bill. He contended that no constitutional question could be settled in that way. When a measure was brought forward, every man would judge for himself, and he was bound to do so, not only by the general principles of duty, but by the solemn and only oath he had taken in this House. Therefore, when gentlemen produced precedents of this kind, he gave notice now, he should not

admit them in constitutional questions. They might do very well for a Court, but not for a Legislature. On constitutional principles, there could be no precedent.

Mr. ELLIS moved to lay the bill on the table, at the suggestion of a friend from Georgia, but subsequently withdrew his motion.

Mr. HOLMES made some further remarks, in support of the positions he had advanced, and in reply to Mr. COBB.

Mr. HARRISON, of Ohio, supposed that the gentleman from Georgia had been so completely driven out of the field, on the constitutional question, that he would not have entered it again; but he found he was like the character ascribed to the American soldier by the European soldier: it was very difficult to make him believe he was beaten. With regard to this point, Mr. H. said, he should consider him so, and should say nothing in relation to the constitutional part of this question. And, then, the question recurred, as to the expediency of the measure. They were told this was the only approach, by mail route, to the great commercial depot of New Orleans; and it was in such a state as to be nearly impassable. From this statement of the case, he imagined there was no member in the Senate that would deny the necessity of this work. The question was, who was to do it? It was one of those cases, he acknowledged, that presented the importance of the constitutional power, vested in Congress, to make these roads, in a better point of view than any other that he knew of—the right of passing through an intermediate country (a State if they pleased) in which the interests of all other States of the Union were more involved than the State through which the road passed. Such was the fact, in the present instance. There was not a State in the Union—certainly ten of them—but was more interested in passing this road, than the State of Mississippi. They were told that the State could not do it if she would, because she would be considered a trespasser on those parts of it which did not belong to her, and to which no title had been given by the United States. Under these circumstances she could not; and if she could, she would not do it; because she is less interested in it than many of the States. Therefore, it is, that an application is made of a grant of this small sum of money, to facilitate the conveyance of the mail on the most important route in this country. Mr. H. said it was his belief, that, from the situation the road is at present in, a much larger amount of property might be lost, by losing a single mail, than what was asked for by this bill. He hoped, therefore, that the bill would pass. He hoped no further objection would be made to it on constitutional grounds; for gentlemen might be sure there would be plenty of opportunities for discussing that question during the session.

Mr. BERRIEN, of Georgia, said, the motion made by the gentleman from Mississippi, to lay the bill on the table, was made at his suggestion.

At the moment when this question first presented itself to his view, he did entertain a serious doubt whether the great question which agitates and divides this Union, and which perhaps is destined still more to do so, was not involved in the subject now presented to the consideration of the Senate. If he could believe it necessary to trace to the treaty of 1801, the rights of the United States to do that act, which it was contemplated by this bill to do; in other words, if he could think it necessary to affirm the general proposition, that the United States could acquire, by force of any treaty, the right to do an act, the right to do which could not be traced to the only legitimate source of its power, the constitution, he should still be disposed to pause. But the moderate reflection he had been able to bestow on this subject, during the discussion, had reconciled his mind to the admission of the principle, that the effect of this treaty was certainly of limited extent. This treaty was concluded before the admission of the State of Mississippi into the Union, and the parties to that treaty being considered as distinct sovereignties, might have imposed on the United States certain obligations, from which obligations they could not disengage themselves by any new compacts entered into with the people of Mississippi, on their admission into the Union. To this extent, Mr. B. said, the power of the United States was to be deduced from the treaty, and might be admitted without involving the question of which he desired, to steer clear in this discussion.

As to the general right asserted for the Union, to make roads through all the Indian countries, against such a doctrine he should desire to protest. He would draw a distinction between those lands of Indians, living within the limits of the States which came into the Confederation, with certain chartered limits, and those living within States, who, at the time of the formation of the constitution, had no limits, and whose limits were only defined by the laws regulating their admission into the Union. It seemed to him, that the present bill steered clear of all these difficulties; and, though they had desired this question to rest, yet, if they were required to act on it, he was prepared to act according to the best of his judgment. The general subject having been presented in a formal manner, and in such a manner as to require a formal discussion, he was solicited by no manner step to interfere with that course which the convictions of his duty had prescribed to him; but, if the members of the Senate, generally, were satisfied that, as to this question, the bill was free from doubt, he should not press on their consideration, at this moment, the motion for laying it on the table.

Some further conversation then passed between Messrs. COBB and WOODBURY, and after an ineffectual motion to postpone the bill to Wednesday next, it was ordered to be engrossed for a third reading, without a division.

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Florida Canal.

[SENATE.]

TUESDAY, February 14.

*Florida Canal.*

The Senate, on motion of Mr. HENDRICKS, proceeded to the consideration of the following bill for the survey of a route for a canal, between the Atlantic and the Gulf of Mexico :

"*Be it enacted, &c.,* That the President of the United States be, and he is hereby, authorized to cause to be made an accurate and minute examination of the country south of the St. Mary's River, and including the same, with a view to ascertain the most eligible route for a canal, admitting the transit of boats, to connect the Atlantic with the Gulf of Mexico, and, also, with a view to ascertain the practicability of a ship channel; that he cause particularly to be examined the route from the St. Mary's River, to the Appalachicola River or Bay, and from the St. John's River to the Vassalousa Bay, with a view to both the above objects; that he cause the necessary surveys, both by land and along the coast, with estimates of the expense of each, accompanied with proper plans, notes, observations, explanations, and opinions, of the Board of Engineers, and that he cause a full report of these proceedings to be made to Congress; and, to carry the same into effect, the sum of twenty thousand dollars be, and the same is hereby, appropriated, out of any money in the Treasury, not otherwise appropriated."

Mr. RANDOLPH, of Va., rose, and said he was not so much of a political Quixote, as, at the end of six and twenty years of public life, to run a tilt against a wind-mill in full operation; he would only say, that, it being his misfortune to doubt the constitutional power of Congress to act on a subject of this sort within the body of a State, he was equally stupid, he would not say "ineffably" so, to doubt its power within the body of a Territory: for he really could not very well see the distinction, the difference—indeed, it was a distinction without a difference—of pouring out the money of the Treasury—the money of the people of the whole United States—upon these projects, whether within the body of a State, or within the body of a Territory. He thanked God he was not so much of a political metaphysician, as to think such nice distinctions of any great importance. It was one of those cases where the play was not worth the candle. It was from this motive that he had voted against the bill, which had, to-day, passed the Senate, for making a road through the State of Mississippi. This Government, said Mr. R., has been in operation now some seven and thirty years, and what road, or what improvement has been made at its expense, in the adjoining States of Maryland, Virginia, or Carolina? I appeal to the honorable Senator from South Carolina if there is any piece of road—and, in South Carolina, I understand—I hope I may be mistaken—that there exists none of this political squeamishness, which exists in us Virginians, about the exercise of this right—I appeal to the Senator from South Carolina, if there is a piece of road, in the whole world, that more requires the interposition of Govern-

ment, than that road about Marlborough Court-house—the causeway on this side of Pedee? No, sir. Has there been any proposition to mend it at the expense of the United States? None at all. I, therefore, who go for the fact, do not care one button, whether the public treasure is poured out in doing for the States, that which it behooves the States to do for themselves, or in doing it in the first instance for those particular favorites of Executive patronage, the Territories; where the power of this Government, the Executive branch in particular, is almost all powerful, that they may be dandled and swaddled, and nurtured up, into ready made States, and gain all their improvements at the expense of the General Government. I have not the slightest idea of arguing this question; it has been argued so often, and so much better and abler than I can pretend to do it, that I rise only for the purpose of recording my vote on the present question, and asking for the yeas and nays on the amendment.

Mr. HENDRICKS, of Indiana, said this was a question of mere expediency; a question which has often been decided. It was a question for a survey; one on which a general law, and a general appropriation, had heretofore been passed; and, in reference to which, an item in the appropriation bill had passed the other House during the present session, and was now before the Senate. If, on this proposition, the constitutional question was to be canvassed, a broad field would be opened, and a broad discussion would of course ensue. Mr. H. said he would state, as briefly as he could, the object of the committee in reporting this amendment to the bill. The bill itself authorizes a survey and examination of the Peninsula of Florida, with a view to a canal to connect the Atlantic coast with the Gulf of Mexico, at the Appalachicola or the Suwannee Bay. The section under consideration authorizes a continuance of the same survey and examination to the Mississippi River. The committee were induced to report this amendment from an examination of maps of the coast, from the Appalachicola to the Mississippi, and from other sources of information on the same subject. The maps of the coast alluded to, show, with little interruption, a continuation of lakes, bays, sounds, and inlets, almost the whole distance; show the practicability of a perfect inland navigation for 850 miles, by cutting at various points, short distances; which, according to the information given, and now on the table, amount to no more than twelve miles. The importance of this communication may not, at first view, appear. It may be said that from the mouth of the Mississippi to the Peninsula of Florida, the Gulf is open, admits of safe and easy navigation, and that an inland navigation is here unnecessary. This may be good doctrine for ship owners, and those who follow the coasting trade, but it is very much otherwise for the growers of, and traders in, the produce of the western country. If the navigation be thrown into the open Gulf, the produce of the West, seeking a



market, is stopped at New Orleans; and if it would progress any further south, it is subjected to the expense and delay of transhipment. Even the Mobile and Pensacola Bays, to which the navigation is at present almost complete, are shut against the produce and the navigation of the western country. Sir, said Mr. H., more than one-half the Territory, and more than one-third of the population of the Union, depend on the Mississippi River for the transportation of produce to the southern market. That whole extent of country, and mass of population, are interested in the success of the measure proposed. This inland navigation completed, and the produce of the western country, in the same vessel in which it shall have been shipped at Pittsburg, or at any point on the Mississippi, or any of its tributary streams, may pass directly into the harbors of the Florida coast, into the canal of the peninsula, and find its way to the Atlantic borders and the markets of Georgia; and if in a vessel calculated to stem the currents of the Mississippi, may return laden with the cotton and sugar of Louisiana and Florida, and with the productions of all the countries watered by the rivers which fall into the Gulf of Mexico, through the coasts of Florida. The half of the States of the Union are in a greater or less degree interested in the measure now before the Senate. But, the constitutional objection, so often urged against the power of Congress to construct roads and canals, is brought to bear on this amendment. This objection he did not expect to meet on a mere proposition to explore, to survey, to do that which is doing every day by the Secretary of War, under the authority of Congress. Two years ago, a law of Congress was passed, authorizing surveys, estimates, &c., and the employment, for that purpose, of the topographical and civil engineers of the country. This bill appropriated \$30,000 for carrying the objects of the law into effect, and, sir, but for the fact that the appropriation under this law is exhausted, the Secretary of War would direct the progress of this very work, which according to the opinions of some gentlemen, we have no power to direct here. How many roads have you surveyed through the various States, and what are some of your engineers doing now? Are they not employed in surveying a road from this city to New Orleans? This, said Mr. H., is, according to my humble judgment, a work to which considerations of expediency will alone apply; and, in this view of it, it was to be presumed, there would be but few objections to the amendment. Sir, said Mr. H., what is the cause of our solicitude about Cuba? It is, that Cuba is the key of the Gulf Stream. It is because this island, in the hands of a maritime power, could command and control the navigation and the commerce of the Gulf of Mexico, and of the West Indies. This canal from the Atlantic to the Mississippi completed, and the power of this position over our commerce, must, in a great measure, cease. The exports of the half of the Union would no longer be exposed to the pira-

cies of the West Indian seas, or the no less fatal casualties of shipwreck off the Florida Cape. This canal would afford an inland navigation, which would avoid the dangers of the cape; and the day is, perhaps, not far distant, when a canal, at the isthmus of Panama or Darien, would give to it much of the commerce of the East Indies, and of the Pacific Ocean. This, properly speaking, is a measure for the protection of commerce, and not a question of internal improvements.

Mr. JOHNSTON, of Louisiana, said that the object of the amendment was to continue the survey along the coast, according to the plan which was presented about two years ago. His opinion was, that if a ship channel were practicable, it would supersede the necessity of an inland navigation; but while the Engineers were on the spot, it was a matter of economy to continue the survey. It was a saving of time, and it would enable the Government to act more speedily. He was apprehensive, however, that it would embarrass the bill by presenting constitutional questions; though, in relation to our Territories, he believed our power was sovereign, and that we could exercise over them all the rightful powers of legislation; and this was the first time he had ever heard an intimation that Congress did not possess it.

Mr. J. said he had no objection to the amendment. It proposes merely to extend the survey along the proposed line of interior communication, the whole of which is extremely interesting. But the ship-channel which this bill contemplates, is of infinitely more importance, and calculated more strongly to engage the attention of this House.

The object of this work is to draw all the navigation of the Bay of Mexico, which now passes through the strait between Cuba and Florida, to a more convenient and safe channel through the peninsula, the effect of which will be to diminish the length of the voyage; to produce great economy in time and expense; to avoid the usual dangers and losses; to give to the western country, at all times, in peace and in war, a free and open communication with the Atlantic; to deprive Cuba of her position, and to place the trade of that sea under the control of this Government.

Of the localities of the country, I have before spoken: of the practicability of the work, not a doubt exists on the minds of the scientific and experienced Engineers; and I wish not to detain the House by an account of the magnificent works of this kind which genius, labor, patience, and enterprise, have accomplished in other countries, for objects of comparatively small importance. The Caledonian canal, uniting the two seas through Scotland, constructed with twenty-three locks, and forming a line of seventy miles, and the canal from the Helder to Amsterdam, of forty-eight miles, below the level of the adjacent sea, both capable of passing frigates of thirty-two guns, demonstrate the practicability of such works, where nature

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*Florida Canal.*

[SENATE.]

nas not interposed physical impossibilities. I understand that a work of great magnitude in Sweden is still continued with unabated zeal and confidence; that the apparent delay is owing to the extent of the work—the partial appropriations of the Diet—not to any insuperable difficulty, or physical impossibility. It is under the direction of an able minister, who perseveres in the object with a zeal that ensures success. It is expected to be completed in 1828. They began by survey, as we do; they acted as we shall, upon the opinions of Engineers. A failure is not anticipated.

To form some idea of the present and future extent and value of commerce of this region, we must look to the great expansion of this Mediterranean Sea, the country that surrounds it, with the population that inhabits it, and the productions it affords for exchange.

It extends from Appalachicola Bay, west, along our own coast and the Bay of St. Bernard; thence, south, to the same extremity of the Isthmus of Darien: thence, twenty degrees east, through the Caribbean Sea, and thence, northwardly, along the coast of Jamaica and Cuba, occupying all the space between those islands and Florida, Louisiana, Mexico, Guatemala, and Colombia.

It embraces a country of immense extent, with a population of fifteen millions, and producing the richest productions of the earth; the whole of whose commerce necessarily passes through the only outlet to the Atlantic, a narrow, crooked, and dangerous channel between Cuba and Florida—bound by shoals, reefs, and keys, with a strong, irregular, and unequal current, exposed alike to the calms and the storms that prevail there.

The loss of property and lives is incalculably great. I have evidence of the loss of sixty-four vessels, estimated at \$700,000, during the last year. Here Mr. J. said he had an accurate schedule of all the losses during the last year, furnished by a gentleman of Boston. It appeared by that statement that the five first vessels were estimated at \$470,000.

But let us take a more accurate and particular view of this commerce. The whole of the country west of the mountains, and by far the best and largest portion, depends on the Bay of Mexico, and furnishes alone an extensive trade. It produced last year 273,000 bales cotton, (Mississippi River, 208,294; Mobile Bay, 58,797; Florida, 6,000 bales.)—nearly half of the productions of the United States, besides sugar, molasses, tobacco, flour, and other provisions. They are stated to have equalled twenty-three millions last year, and to have employed, from the Mississippi alone, 150,000 tons shipping. There entered the port of Orleans, in 1825, seven hundred and thirty-two vessels, making 1,464 voyages; and, including the Mobile Bay and Florida, probably amounted to 850 vessels and 1,700 voyages.

To form a correct opinion of the value of this interior communication, we must bear in

mind that our vessels will pass due east, from the mouth of the Mississippi River, in the shortest time, on an open sea, free from danger, almost out of the range of the violent winds of the West Indies, and under the protection of a naval force that will find in Pensacola the same advantages of position that Cuba presents to a maritime power, and that each of these vessels, in each of these voyages, traverses fourteen degrees of latitude in distance, and increases her passage about eight days, and the outward voyage will require a long time to beat up against the current. It may be safely calculated, that on the outward and return voyage from New York to New Orleans, one-half of the time, and one-third of the distance, will be saved, and a corresponding diminution of expense.

This export of our country, which employs so many vessels and seamen, of which I have spoken, is entirely the production of the earth, from our own labor, and not liable to any deduction for raw material, foreign skill, or capital. It is the production of three millions of people, with ample space, a rich soil, and favorable climate, which, in twenty-five years, will, probably, double their number, and whose productions will increase in a corresponding ratio. Besides this export, it must also be remembered, that a supply equal to the consumption of nine States, is brought into our ports from the Northern States, or from Europe; that these importations must likewise increase with our numbers and wealth.

I am unable to furnish a full statement of the navigation and commerce of the Spanish Americas, bordering on the Bay of Mexico. The exports of Liverpool alone, for the South American markets, of British goods, at the custom-house price, for the year 1823, amounted to thirty-four millions of dollars, of which more than twenty millions pass by this route. This is independent of the amount shipped from other ports in England, or from the rest of Europe, the re-shipments from this country, and the direct trade of American supplies, which is equal to six millions. In addition to which, a large amount of the export trade of Jamaica and Cuba pass by this route. The whole of this trade, with the exports of Mexico, Guatemala, and Colombia, will employ 150,000 tons of shipping, equal to seven hundred vessels, forming an aggregate, with our own, of 300,000 tons of shipping, and 1,500 vessels.

This country, like our own, is rapidly augmenting in numbers, and daily developing its resources. They have just emerged from a long and ruinous war; and the influence of peace, independence, and freedom, has not yet produced its effect upon the industry of this portion of our hemisphere; and we may anticipate, when this influence shall be felt, that, from the extent of territory and population, and the value and variety of their productions, this trade will greatly increase.

We might cast our minds forward, to a period not distant, when a similar work, now contemplated, will open a safe and short passage to India, through the Isthmus of Darien, which will form, with this connection with Florida, a new and interesting field of enterprise.

It is in vain to calculate the extent of trade in twenty years through this sea, with the rapid increase of population, and the new springs of industry and enterprise which this commerce will excite.

There are other considerations, of little less weight, of a political character. The island of Cuba occupies a strong position on our continent. She is called by military men the key of the Bay of Mexico, and capable, with equal naval force, to lock up the navigation of that entire region. She holds the same relation to this continent that England holds to Europe—and to the Bay of Mexico, the same position that Gibraltar holds to the Mediterranean; and in the possession of a people equally enterprising, skilful, and powerful, would attempt to exercise over us and our trade the same uncontrolled influence that the greatest maritime nation has for a long time exercised over the rest of the world.

I do not doubt, myself, that into whatever hands it may fall, we shall be at all times competent to defend our trade, and able to maintain in that sea a force sufficient to restrain the power of the most ambitious. Yet, it is true, that a naval force, with a secure and fortified harbor in possession of the island, would operate with advantages which nothing but superiority of force could conquer, and would cost great sacrifices to maintain. This is the point where a naval force could act upon us with the greatest effect. This is our vulnerable point. The occlusion of the gulf would have a powerful influence on the social and political condition of the West. It would result in the ruin of agriculture, and the annihilation of commerce, or in the sacrifice of their independence; and, perhaps, in consequences fatal to the Union. This sentiment is so strongly felt, that any attempt to occupy this position would rouse this country.

But there is reason to believe, at some future day, when war is renewed, that the dominion of this sea, and perhaps this island also, may become a prize to be fought for; that a great naval action may decide the question of power, and that day may not be far distant.

This view of the subject will strikingly illustrate the value of our naval force to the union, independence, and security of our country, which some supposed was required only to protect the commerce of the Atlantic States; but which, to my mind, is equally necessary to the safety and liberty of all. The time is rapidly approaching when our increasing numbers, strength, and means, will place us beyond the reach of danger. But if a competent force could, by any combination in Europe, be col-

lected to close this narrow passage, we should instantly feel the necessity of this private covered way of our own through the peninsula, which would induce the navigation to desert its natural channels—deprive Cuba of her position, and the enemy of his power. It would produce an entire revolution in commerce. The difference of expense alone would give so decided an advantage, that no State could compete with us in that sea; and if the unjust discriminations and unequal regulations of foreign nations render it necessary to countervail their measures, we shall have the means of rendering it effectual.

In fine, whether we take a commercial, political, or military view of this subject, whether in a state of peace or war, whether at present or any future time, we shall be convinced of the advantages it will give, the security it will afford, and the power it will confer.

Mr. RANDOLPH said he did purposely abstain from entering into the merits of this question: he did purposely abstain from entering into the principle, much less into any of the details: he would not even go into one of the least degrees of that principle: but he felt called up by a remark which had been made by a gentleman who had just taken his seat, that this is the first time he had ever heard it questioned, that Congress possesses sovereign and omnipotent power over the Territories of the Union. I am very much afraid, said Mr. R., that the gentleman and myself will be found, in the course of our political journey, to differ, not on this point only, of constitutional law; and I ask his leave to tell him, that not only is the power of Congress, whether Legislative, Executive, or Judicial—of either branch or all combined—and much less of a single branch—not sovereign and omnipotent over the Territories, but that the power of no other free Government under the sun is sovereign and omnipotent anywhere; it is utterly inconsistent and incompatible with the principles of free institutions that a Government should be sovereign and omnipotent. I know, sir, we hear a great deal about the omnipotence of the British Parliament, and, I am afraid, we hear more of it than we rightly understand. In some senses of the term, the British Parliament has been said to be omnipotent, and some of the worshippers at the shrine of power have gone so far as to say, that Parliament can do any thing but change a man into a woman, or *e converso*; but it is well known to those who have studied the constitutional law of England—it is well known to those who have been conversant with the history of that country, and who have seen its system emerge from the darkness of barbarism and feudalism, to its present state, that there is a great deal that Parliament itself cannot do, although that is an integral and simple Government, *totus teres atque rotundus*, complete within itself, and not a dependent and limited Government, owing its power entirely to a grant, the voluntary

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grant, of free, sovereign, and independent States. Now, the idea, that a Government, confessedly instituted for certain purposes, and those principally of exterior relation; a Government that cannot show any power it possesses out of the deed of gift; a Government that has to resort perpetually to the parchment to uphold its capacity to act; a Government which, so far from being self-dependent, rests entirely on the will of its creators;—put a case: suppose the several States refuse to send delegates here, what becomes of your omnipotence?—I say, sir, to suppose such a Government to be sovereign and omnipotent anywhere, is a figure of speech, which I believe rhetoricians call *catachresis*—but, thank God, I am not a rhetorician. If it were necessary, I could state a great many things which the Congress of the United States, and the President of the United States, cannot do, even in these poor, miserable, abject Territories. They cannot violate the person of a free American. “I am an American citizen;” this is a protection, a panoply that their spears cannot pierce. In regard to those Governments, from the first institution of that of the North-west Territory, down to the last, which I believe was Arkansas, I have held them to be abhorrent to the nature and genius of our institutions. I shall not go into the point, and why? For the same reason that I did not go into the expediency and benefits of this canal. They are Governments proconsular in their very nature, and they are exercised over obscure and remote provinces by a satrap who never forgets that he has been a satrap.

Sir, I did not rise to favor the Senate with a geographical lecture, though, even on the subject of geography, I too have had some shallow spirit of judgment; nor to give a statistical lecture, or a lecture on the subject of commerce, which would come much better from the Chairman of that Committee. I merely rose to state that I am one of those who are so stupid—I said, expressly, not “ineffably stupid”—as to believe that Congress does not possess this power; therefore, all I asked, was the yeas and nays, so as to be able to record my vote. I said, that, after so many years of public life, I was not so much of a Quixote as to run a tilt against a windmill in full operation, with the wind at north-west; but, if I had been disposed to favor the Senate with a geographical lecture, I certainly should not have been able to inform them that either Cuba or Great Britain occupied positions on this or the other continent. I have always been under the deplorable mistake, that both of them were insular; I readily admit that Cuba occupies the same position on this continent that Great Britain does on the other continent; because, neither of them occupy a position on either continent.

With regard to this question of canals, if we must go into the expediency of a canal of some three or four hundred miles, between the Apalachicola and the Mississippi, it will extend

through two very large States, and part of another—through the whole breadth of Alabama and Mississippi, and a small part of Louisiana. It is very well known to persons conversant with canals, that it is much easier to dig even through the granite of Scotland, than to make a canal through morasses and quagmires. The difficulties which have been experienced in the construction of the Chesapeake Canal have not been found in the hard ground, but in the nature of the ground of an opposite quality—in the quagmires. We are told of the canal that the Dutch have cut, from the Zuyder Zee to the North Sea. Really, sir, the distance which is in that little narrow strip of land in North Holland, or West Friesland: for it bears both appellations—between the Zuyder Zee and the German Ocean—what is it? If Holland, itself, were put down on this country that we propose to cut through, you would hardly be able to find it; either the Marquis de Maison Rouge’s, or the Baron de Bastrop’s, claim would go very near to cover it. Holland is the country, of all others in the world, the most dense in population, and most abundant in disposable capital and labor, except, and that very lately, this same island, which occupies a position on the continent of Europe; and this country is to be put in competition with the sand-banks, the hammocks, the savannahs, pocosons, and swamps of Florida, Alabama, Mississippi, and Louisiana! How many inhabitants are there to the square mile? What the surplus disposable capital? All this only shows that, when once the fever is up, whether it is for internal improvement, or external operations; for Colombian scrip, or Poyas’s bonds—look to the situation of England now—it will run its course, unless the doctor should cut it off, and the patient with it, by the plentiful administration of the lancet and calomel. What, sir, is this *argumentum ab inconvenienti* which induces us not to look at the charter of our powers, because it is very convenient for us to have a canal here, or a road there, or a something else elsewhere? I will push it to its legitimate consequence; and, if we must have an appropriation contrary to the constitution; if we must pour out the money of the whole United States for these purposes, because of the position which Cuba occupies on this continent; I say, let us annex Cuba to this country in fact. While you argue from the convenience of the thing, totally forgetting all the great landmarks of the constitution, I am clear that, instead of cutting this canal, we should take Cuba; and there never was a better time for it—let that committee, or some other, bring in a bill for really making Cuba take a position on this continent: To be sure, there are consequences that might ensue; but what are the statesmen, the poor purblind and timid statesmen, who look to consequences? No, sir, your gallant statesman, when once he is mounted on his Rosinante, and fairly in the lists, looks to no consequences but to his own consequence.

Mr. WHITE, of Tennessee, said he designed to have voted for the bill in its original shape, believing, for one, that they had the power to make an appropriation for the object specified in it, though he was not so sanguine as some other gentlemen as to the practicability of this canal. Should the present amendment prevail, however, the bill would assume a new shape. It provided not only for an examination for a route for the canal in Florida, but also for a pretty extensive route for a canal through States. Mr. W. said that it might be that the Congress of the United States, under the constitution, is vested with the power to make such roads and canals; and when he was satisfied that such was the fact, and a fit case presented itself, he should agree to exercise it. While, however, he doubted this power, he could not consent to exercise it, and, therefore, in the shape which the bill would assume if the amendment were agreed to, he could not be amongst those who would vote in favor of its final passage. He should, on this account, be sorry if this amendment was adopted, as he wished to vote for the bill as first introduced.

Mr. JOHNSTON, of Louisiana, rose to make a few remarks in reply to the gentleman from Virginia. He was very unwilling to enter into any discussion with that gentleman; he would reply to the arguments he had used, without taking any notice of the manner in which he had thought proper to treat this subject. Mr. J. regretted much that that gentleman should have thought it necessary, in the discussion of a bill of so much importance, to have changed the customary style of argument in this House, and to make such a display of raillery as he had thought proper to apply in relation to him (Mr. J.) They stood in different relations in this House, and, Mr. J. said, the age and standing of the gentleman from Virginia forbade his taking the same liberties with that gentleman that he had taken with him.

[Mr. RANDOLPH explained. He meant no personal offence to the gentleman from Louisiana. It was his argument only which he had referred to.]

Mr. JOHNSTON proceeded. He had stated that Congress possessed over the Territory of Florida all the powers of rightful legislation, and, on those subjects, her power was omnipotent. Could he be supposed to be so ridiculous as to say that Congress possessed omnipotent power to legislate over Territories?

[Mr. RANDOLPH again rose. If the gentleman had used the expression that Congress possessed all the powers of *rightful legislation*, he should not have questioned the gentleman's position. He was willing to believe that he *intended* to say it, and he was also willing so to understand him; but he could assure him, on his word, that if he did mean to express himself so, he had done what he (Mr. R.) had often done—he had not succeeded in so expressing himself. He was not such a caviller as to take him or any other gentleman in this

House, in a sense in which he did not mean to be understood.]

Mr. JOHNSTON resumed. He believed he had said that Congress possessed all the rightful subjects of legislation, and that it had complete power over all the subjects of legislation. He did not mean to say that Congress might exercise arbitrary power over the Territories, that they might exercise the power of life and death, or the judicial or executive powers over them. No one could suppose him to be so ignorant as to say so. But, in relation to all the usual powers of legislation, in regard to all the subjects on which legislative bodies usually act, he said they possessed omnipotent power. There was no limitation to the power. The present was a proper subject for legislation, and it was a power which could not be exercised without legislation. This being a subject of legislation, and Congress having all the rightful subjects of legislation within its jurisdiction, it followed they had a right to legislate on this subject. The gentleman from Virginia had cavilled on the phrase, "occupies a position." Mr. J. had said that the island of Cuba occupied a position on this continent, or in relation to this continent, that England occupied in relation to Europe. It was a very common expression. We say a fleet has anchored on our coast; a fleet has taken a position on our coast. It is a common military expression. Great Britain occupies a position, in relation to the continent of Europe, and on the continent of Europe, though not connected with it. All the islands in the Mediterranean are positions on the coast of the Mediterranean, exactly as a fleet anchored in our waters has taken a position on our coast and on our waters.

Mr. HOLMES was in favor of the bill and against the amendment. He had no doubt that Congress has the power to survey this ground for the purpose of making a canal in the Territory, or a right to make it. He believed, however, his friend from Louisiana had defined that power by a figure a little too broad; but he was well satisfied of his meaning, even before he had made the explanation. Congress, Mr. H. said, possessed the same power of legislating over the Territory as it had over the District of Columbia; and it was a legislation over these Territories, subject to the stipulations of the Constitution of the United States. No one would contend that they could regulate the religion of the Territories, nor that they could quarter troops on the inhabitants in time of peace, because it was prohibited by the constitution. They might legislate, subject to the rights of the people of the Territories, but they could not take the property of these individuals, and convert it into this canal, without giving them an equivalent. Whether the attempt to make the Florida canal succeeded, or not, Mr. H. said he was willing to incur almost any expense, if there was a prospect of success. He would do almost any thing to avoid the navigation round the cape, the keys, and reefs

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of Florida. It is the bane of sailors; it is a Golgotha—a graveyard. He should not think it much of a loss to the United States were the whole Peninsula of Florida sunk into the Gulf of Mexico. He believed it would be a blessing to this country if they could dig it down with shovels and sink it into the deepest place in the gulf. He thought that, within the last half century, it had been the grave of more persons than now inhabit the whole of both Floridas. He considered the present subject as most important in every point of view, whether as regarded the United States, or the mariners; and he would venture almost any thing to avoid this dangerous navigation. Mr. H. said the Western and South-western States were usually very modest in their claims; but they seemed to have adopted the maxim, never to lose any thing for want of asking, and perhaps it was a very good one; but he thought the better maxim was the one they were accustomed to teach their children—(though he did not look on *them* in that light), if they wanted to get much, to ask for a little at a time. On their tables there was an appropriation bill, which appropriates a small sum for the purpose of surveys. If this doctrine was to be established, first, that they had a right to survey routes for roads and canals, and afterwards that they had a right to make them—a doctrine which he had always combated—yet, if he was to be beaten in that, he agreed with the gentleman from Virginia, that, if they broke open the chest and took out the money—though, Mr. H. said, he protested either against breaking open the chest or giving up the keys—give him his share. A little money is to be applied for this purpose of surveys, and surveys have been made in almost every State and Territory, except in Maine, the *Ultima Thule*, a place which had been quite disregarded. Mr. H. concluded by saying, if the amendment prevailed, he should be constrained to vote against the bill.

Mr. FINDLAY, of Pennsylvania, said, this bill contemplated nothing more than to make a survey to ascertain the capacity of the country for improvement—a thing which they had been in the practice of doing for several years. Mr. F. was against the proposition, that the United States had the power to make roads and canals through the sovereign States, without their consent; but he did not think they were warranted in drawing the inference that they possessed this power from the circumstance of employing the United States engineers, to ascertain the capacity of the country for improvement. He thought this canal was important to all the States bordering on the Mississippi, and the tributary streams. At present, there is only one market for the sale of their produce; but, if this canal was found to be practicable, they would have a choice of markets; and there would be another advantage to be derived from it—in case an epidemic raged in one place, they might proceed to another. He was, therefore, in favor of the amendment.

Mr. HARRISON, of Ohio, offered a few remarks in support of the bill and the amendment, both of which he considered of great importance. The gentleman from Maine thought the new States were not remarkable for their modesty, and that, on all occasions, where they could get any thing by asking, they never failed to demand it.

Mr. H. said he had never known that the portion of country which the gentleman came from, was remarkable for its modesty; and, if it was, the gentleman himself was in a fair way to get rid of it: for he had told them he was about to ask for something for his *Ultima Thule*. Mr. H. said he should not have noticed the remark that fell from the gentleman from Virginia, (Mr. RANDOLPH,) on his own account: for it was a matter of indifference to him, what that gentleman thought of the persons who had the good or bad fortune to exercise the appointments of Governors of Territories; but it was necessary to defend his constituents. He represented a State, the inhabitants of which understood all the duties, and were alive to all the feelings of freemen, as well as that State which the gentleman himself represented, and for which he (Mr. H.) had the greatest respect. Mr. H. said he had, for twelve years, exercised the power of *Satrap*, and, he trusted, during that period, he had never forgotten that he was an American citizen; and that they were citizens for whose benefit the power was conferred upon him. There was evidence now in this city to show, that one, at least, of the very respectable States that composed the Territory that he had the honor to govern, had very different feelings on this subject from those which were entertained by the gentleman who had alluded to the subject.

Mr. HAYNE, of South Carolina, thought a few moments' reflection would satisfy the gentleman who had offered the amendment, that it involved a principle different from that which was involved in the bill. When questions agreed in the same principle—if, for instance, it was proposed to act on a single case, there was no reason why you should not embrace others of the same class: but, when it could be shown that an object, which every one agreed was a proper one, would be jeopardized by being connected with another of a different character, then they certainly ought not to be placed together. In the present case, the original proposition was to make a survey through a *Territory* of the United States, for the purpose of ascertaining whether an object was practicable, which all admitted to be very desirable; and it was now proposed, as an amendment, to make another survey through a *Sovereign State*, without a provision for the consent of that State, when gentlemen well knew, that there were several individuals on this floor who believed that the power of the General Government extended to the one case and not to the other. Without entering into the argument on the subject, Mr. H. said, it ap-

peared to him that the two subjects ought not to be connected together, because they involve, in the declared opinion of many gentlemen, a different exercise of power. The gentlemen from Tennessee, and from Maine, had both stated this to be their opinion. It would, he therefore thought, be best to finish one subject first. Let us ascertain, by a survey, whether the ship channel could or could not be cut across the Florida Peninsula, over our own territory, and then it would be time enough to proceed further, and inquire whether this additional survey, from the Chattahoochee to the Mississippi, would be necessary, and was fairly within our constitutional powers. He would entreat the friends of this measure not to embarrass it by a proposition differing somewhat in principle, and also in its details.

Before he sat down, Mr. H. said, he would notice a remark that the gentleman from Virginia (Mr. RANDOLPH) had made, in speaking of the State he (Mr. H.) had the honor to represent, though not in any terms of which he complained. He had asked, whether South Carolina had received any portions of the favors of the Federal Government, in this respect, and whether some of her roads did not need it? It so happened, Mr. H. said, that he never had, like the gentleman from Virginia, travelled the road to which he alluded; he, therefore, could not say what was its present condition; but he would inform the gentleman that the State of South Carolina, within a few years, had expended nearly two millions of dollars in cutting its own canals, and making its own roads; and if that gentleman should ever honor that State with another visit, and accept of the hospitality of its citizens, he would find the ways open, and in good order, and he would, he hoped, have a pleasant journey. As regarded the favors of the General Government, Mr. H. said, it was true they had received none. Though their harbors had been surveyed with a view to fortify them, the works had not yet been begun. They had never asked for favors, and were not much in the habit of complaining; but, when they did ask, he hoped they would not be refused.

Mr. RANDOLPH said, the gentleman from South Carolina had misapprehended him; and it was probable it arose from the clumsiness of his (Mr. R.'s) own expression—a fault to which he was afraid, from the consequences that had followed his addressing this body, he was too much addicted. He did *but* mean to state that there was a distinction between these questions, taken upon political metaphysics—between the power of Congress within a State, and over a Territory, taken upon political metaphysics—but he was almost sick of political metaphysics. He did not believe that Congress had all the powers within a State, that they had within a Territory; but he did not see the difference between Congress putting their hand into his pocket, for the purpose of cutting a canal in the State of Alabama, which was a Territory yesterday;

or in the Territory of Florida, which will be a State to-morrow. Some of the earliest lessons he received in politics, Mr. R. said, were under that great teacher, old Roger Sherman; and another great teacher, the most sagacious man, perhaps, that Virginia ever bred, old George Mason. They always went for the substance of the thing, and not for the shadow. Sherman's rule was, give me the vote, and take the argument. He was for the practice; as the gentleman from Maine said, he was for the money—keeping it within the Treasury of the United States, or in the pockets of its constituents, where it was more safe to lodge it than in any Government under the sun, and from which it was Mr. R.'s belief, it ought to be, by no Government that consults the interest and happiness of the people, ever taken, without real and obvious necessity. In regard to this necessity, in regard to this Scylla and Charybdis, it has been about as much exaggerated, as in the old story that we have read of in our youth, in the blind old man of Scio's Rocky Isle. Go to the insurance offices, and ask what is the insurance against the sea risk, pirates and all? Was it ten per cent.? It was long, Mr. R. said, since he had any thing to do with the Treasury; it was long since he had devoted his mind to statistics—to such minutiae; but he was convinced that insurance of the United States, to no part of the world, even doubling Cape Horn, amounted to ten per cent. A gentleman near me, of commercial experience, says it is from one and a half to two per cent.

Mr. R. said he did expect that, when the gentleman from South Carolina gave him so warm an invitation to his native State, he would have reminded him that the first step in this, as in some other cases, constituted the chief difficulty—he meant from this place to Fredericksburg, the great Serbonian bog between Ocoquan and Chapawamsic. He would only say to the gentleman from South Carolina, that such was the hospitality of his reception, when in that State, that he did not require an invitation to repeat it. The hospitality of South Carolina was proverbial.

Mr. R. was very sorry, that, in the use of ridicule as an argument on this floor, he had fallen under the censure of any member, but he should be permitted to take shelter under a high authority—one of the strong positions on the continent of Literature. As this very high authority had asserted that ridicule was the best weapon by which to cut up great things, *a fortiori*, it must apply to little ones.

He could not agree, with the gentleman from Maine, that Congress possesses the same power over their other Territories that they possess over the District of Columbia; and why so? Because it was not necessary for him to tell the gentleman from Maine that *nullum simile est idem*. The Territory of Florida or Arkansas is a Territory, and the Territory or District of Columbia is a Territory; and so far they are alike—as like as Macedon and Monmouth;

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there is a river in Macedon, and there is a river Monmouth—so says Fluelen; and there are salmons in both: this was to prove the parallel between Alexander the Great and Harry the Fifth; but in no other respects, but that they are called Territories, is there any similitude, much less identity. Indeed there is not even a similarity—not even in name. What are the words of the constitution? Mr. R. said he was very sorry that this book [holding up the constitution] was so seldom resorted to. It was like the Bible, in which we kept receipts, deeds, &c.: and never looked into it except when we happen to want them; and even then we are so little in the habit of using it, that we forget where they are mislaid. The words of the constitution are these: "Congress shall have power to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of Government of the United States, and to exercise like authority over all places purchased, by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." Here, said Mr. R., was their authority over the District of Columbia; which, adopting the nomenclature of the constitution, was not even a Territory—and now for the authority over the Territories. "The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the Territory or other property belonging to the United States." If Congress possesses the same power over the other Territories, Michigan for instance, that it possesses over the District of ten miles square, then Michigan could never become a State—and he should not be very sorry to hear it. Could this ten miles square ever become a State? No, it could not. If it were to become as populous as London, and the district ten miles round London, it never could become a State; it never could have a Representative in the other branch of the Legislature, or two Senators on this floor. It could only have a Delegate, to speak, but not to vote; and he was not quite certain that the constitution would authorize even that. What was the case with Indiana, Ohio, Illinois, &c.? They were under a certain ordinance, which will live forever in the statute book and in history, a monument (he was sorry to say it) of the folly, the infatuation of his parent State. They are, if you please, a Territory over which Congress shall have power to make all needful rules and regulations. Does that sound like omnipotent sovereign authority? But let that pass. But they are in an inchoate condition: they are—as old Lilly hath it, in the future in *res*—about to become a State. And is it possible? I cannot believe that the authors of this instrument, who were very sagacious men, though their sagacity did not, because it could not—it was not in the nature of things—it is not in the nature of

man—that it should extend to the point of seeing how this political machine, when they put it into operation, would work. I cannot believe that they intended, by "needful rules and regulations respecting the Territory," any such monstrous grant as this—that is now claimed for "The Congress." We have had to cobble several parts of it, and we are now tinkering the very same part of it again. Such is political foresight. I hope to be permitted to speak as a plain and unlettered man. I never shall enter into a dispute on the subject of philology as long as I live. I speak in the plain vernacular tongue, level not only to the comprehension of this august assembly, but to that of my constituents, the people, the State of Virginia. Men commence with the control of things—they put events in motion—but after a very little while, events hurry them away, and they are borne along with a swift fatality, that no human sagacity or power can foresee or control. All Governments have worked so, and none more than ours—no man ever supposed that the British constitution, taken theoretically, was to produce the present result; no man ever supposed that the different French constitutions, with their councils of ancients and their councils of youngsters, were to turn out as they had done. A government on paper is one thing—it is such a government as we find here in this book—and a government of practice is another thing—it is such a government as we find here—in this body I mean. The authors of the constitution would never have used separate sets of words to convey one and the same thing. If they had been scriveners from the Inns of Court, and wanted to draw out their parchment to the greatest professional length, though they might have used the set of words applied to the District, they would have used the same set of words applied to the Territory—but you see there are two distinct, and in some regards, discrepant grants of power.

I have learned a lesson to-day (said Mr. R.) which I hope will not be thrown away upon me; that is, hereafter, when I want to record my vote on a question that I conceive to be of consequence in its principles, however regarded by others, not to be betrayed into a discussion, even of that principle, where I know discussion will do no good, or into details, when the details are quite foreign to the matter in hand. I accord my thanks to the Senate for the patience with which they have heard me, and I promise them not very soon to trouble them again.

Mr. HOLMES offered, in reply to Mr. R., a few reasons for the difference between the phraseology of the two clauses, and then said, in reply to the gentleman from Ohio, (Mr. HARRISON,) he did not, when he observed that, from the modesty of his Western brethren, they never lost any thing for want of asking—he did not intend any disrespect to their very respectable Representative. If the people required him, he was obliged to urge their claims. He



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did not wish to enter into any discussion with the gentleman as to which of the two possessed the most modesty. If they were to agree to renounce their modesty, they would have no difficulty in doing it, and their intimate friends would probably not observe the loss.

Mr. MAOON, of N. C., said, the opinion had been expressed that, while the Territories remain such, it was competent for the Government to make improvements in them; but, suppose improvements begun, and before they are finished, the Territory becomes a State—what is to be the consequence? The moment a Territory becomes a State, the General Government must cease to act, and if it cannot go on, all the money and labor expended may be thrown away. In the work now proposed, Mr. M. said, they ought to have proceeded as in all other similar objects—they ought to have estimates of the cost before they begin the work. As for himself, he did not now, and never did, like these Territorial governments; and, by this course of making improvements in them, it only retards their becoming States: for, when they acquire the requisite population, they will still put it off, until all the improvements they desire are made. One wants a canal, another a road, and when they get all they want, they come into the Union flourishing States, with nothing more to ask.

Mr. M. thought gentlemen in an error when they spoke of ten per cent. being charged for insurance to Cuba; he was under the impression it was never so high as that, and now, he understood it was from one to one and a half per cent., and this includes the dangers of the coast, particularly the two Capes of North Carolina, &c. Mr. M. did not agree with Mr. HOLMES, about sinking this Territory in the Gulf of Mexico; he had rather have the land than so much more water. This Territory of Florida was, by the way, a strange country; sometimes it is very good—no country like it—then, again, it is so worthless it is not worth having, and to be sunk in the sea.

Mr. M. said he did not like to go on in this way—the Government was constantly gaining power by little bits. A wagon road was made under a treaty with an Indian tribe, twenty odd years ago; and now it becomes a great national object, to be kept up by large appropriations. We thus go on by degrees, step by step, until we get almost unlimited power. Little things were often of great importance in their consequences. The Revolution in this country was produced by a trifling tax on tea. There were five or six different ways found out of getting power—by construction, by treaty, by implication, &c. He was not willing to take any of them. He was willing to execute the constitution just as it was understood by those who made it, and no other.

Mr. M. concluded by saying, there were constant applications before Congress for these objects; yet nothing was more clear to him than that, if they could be executed with profit,

they would be done by private enterprise, and that it was only when the case was different that Congress was appealed to.

Mr. BRANCH, of N. C., did not wish to detain the Senate any further than to assign the reason for giving the vote which he should give. He considered the Territory of Florida as the property of the United States; it was an infant State, and he considered it as the bounden duty of Congress to foster and cherish this property, and to lead it to a state of maturity as speedily as possible. They must nurse the Territories; they were constrained to do this as regarded their natural offspring, and they were under the same necessity as regarded the Territories, which would hereafter become States. The unappropriated lands in the Territory of Florida belong to the United States, and whatever was bestowed for the work in contemplation would be amply repaid, at a period not very remote, by the enhanced value of the lands which would there be brought into market. Mr. B. perfectly coincided with the gentleman from Tennessee, (Mr. WHITE,)—doubting of the constitutional right of the United States to cut roads and canals through the States, he had hitherto abstained from exercising it; but as regarded the Territory, the objection did not seem to exist. Mr. B. said he should, on all grand questions, feel himself at liberty to vote for every measure that had a tendency to advance the general weal, and should feel himself bound to support the interest of the State he represented, so far as he could do it consistently with a conscientious discharge of his duties. This was the course he should pursue, and he knew the people at home too well to believe that they would not sustain him in it.

Mr. HENDRICKS offered some further remarks in support of the amendment. It only proposed to do that which was doing every day, and which the Engineers were even now employed in doing, between this place and New Orleans. It had been suggested to him, since this discussion had commenced, to withdraw the amendment, and that the Secretary of War would have power to order this survey. This, Mr. H. contended, was a strange circumstance; that the Secretary of War should have the power to do that which this House doubted its constitutional power to authorize. Amongst the several maps and charts with which the committee had been furnished, there was one which tended to show that, of the survey alluded to, the greater part had already been made, under the authority of the War Department, probably for ascertaining suitable sites for fortifications. He thought that they had so far progressed, and had so often adopted this principle, that he could not have expected that any objection would have been made on constitutional grounds, to the section before them; but these objections having been made, if they were to meet them on every proposition that was made, they might as well meet them on this question as on any other. He should, therefore,

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be disinclined to accede to the wish of those who wished the amendment to be withdrawn, even if he had the power.

Mr. MACON said that, whether he voted liberally or not liberally, he would willingly leave it to his constituents to decide on his votes. The fact was, in regard to the anticipated augmentation of the value of lands, in consequence of making the canal in the Territory, that the highest lands ever sold by the Government were sold where there was no improvement, not even a road—he meant (so he was understood) Madison county, in Alabama. As to voting the public money liberally, Mr. M. said he wished to see every thing saved that could be saved, to meet those sixteen millions of the public debt which fell due this year. The Secretary of the Treasury had said we must borrow to meet it. Mr. M. thought it best to husband our resources, and pay off as much as we could, and satisfy everybody that there is a prospect of paying the debt off. He repeated, he did not think it was necessary to expend money in the Territory in this way, to advance the value of the lands. He had no doubt the land would sell as fast as the Indian title was extinguished. It was the country where sugar and other valuable articles would be produced, and the bounty on sugar would make the lands sell fast enough.

Mr. BRANCH said he had ever yielded to the force of the arguments of his worthy colleague, and to his long-tryed experience, and he should examine well the ground on which he stood, before he ventured to differ from him. He took it a little unkind in his colleague to put the construction he had done on the remarks he had made to the Senate. He should have considered the different grounds on which they stood; a patriotic devotion of thirty years to his country had placed him (Mr. M.) firmly in the confidence of his friends at home. Mr. B. said, no man ever paid more respect to his talents and real worth than he did, and he did not wish to contrast any course he should deem it his duty to pursue, with the course of his honorable colleague. He appreciated his motives; he venerated the man; but his conscience told him he must pursue a course, on this occasion, which differed from that of his honorable colleague. His friend, in the course of the remarks he had made to the Senate, had alluded to the vote given yesterday in relation to authorizing the opening a road from Tennessee to Mississippi; and he did vote for that appropriation: for, not only had Congress the right to make this appropriation for a road through the Indian country, acquired by treaty, before it came into the Union, but it was an obligation on the General Government to complete the work it had commenced, and he had therefore voted for it.

Mr. MACON protested that he meant no improper reference to his colleague, in the few remarks he had made. He never entertained a thought that any one was to be influenced by the opinions of another. He was very sorry that his colleague had misunderstood him.

Mr. ROWAN, of Kentucky, said, that, so far as related to the disbursement of money, he was one of the liberals. He was not one of those who thought it a blessing to have an overflowing Treasury. Whenever there was more money in the Treasury than sufficed to meet the current expenses of the Government, it belonged to the people, and it ought to be distributed amongst them to swell the tide of industry. The survey proposed by the bill, as related to the Territory, he conceived to be a very important measure; and he had no doubt as to the powers of the United States to expend the money within the Territory; but, so far as he was at present informed, he was of opinion, with those who contend that the Government has not the power, without the consent of the States, to expend their money on the soil of the State. The territory of the State belongs to the State as a sovereign State; and was a sovereign State to talk about being the object of a favor? Was a sovereign State to demand a favor, and receive it in the shape of a favor? Was it consistent with the sovereign character so to do? The very term implied component power, wealth, and every thing that was necessary for the existence of a State. The wealth of a State, whether of the United States or of an individual State, in his opinion, did not depend on the surplus millions in the Treasury, but exists always in the muscles, and enterprise, and hardihood of its citizens; and this is a source that could be drawn on for every reasonable purpose, and at all times when the wisdom of the State chose to make the draft. He considered an appeal to the United States, by a State, in the shape of a favor, as a renunciation of its sovereign character. He was one of those who believed not only that things influence terms, but that terms influence things; and when they used the language of dependence, they would prepare the temper of the people for the reception of the thing; and in this discussion, and all such discussions, he wished terms to be excluded that were incompatible with the intrinsic meaning of the substance to which they are applied. In inquiring into the power of the State, he did not look into the constitution to find what powers were conferred; he looked into it to see what powers were denied—what the people have denied to themselves. Every thing is subject to their will, and the constitution is but the delineation of the manner in which this will is to be exercised, in what we call the Government: and what is not fairly denied to the State, exists by the social compact.

In the General Government, they were, Mr. R. said, to look into the constitution for all the powers they possessed—there was no such power given in the constitution; and he believed, with deference to the opinion entertained, that, to convey the exercise of such a power, was incompatible with what was the acknowledged power of the States. There was no power given to expend money in roads and canals in the States; there was no such power

specifically given to the United States; and when once it was settled in this House that power could be derived to this Government by construction, you have discovered the means by which the whole power of a State might be frittered down and annihilated. Construction is a thing of inconceivable dilation. But without going into political metaphysics, there was one aspect of the case which should present itself on all such questions. We are apt to say, this Government has power, and that Government has power; and the general phraseology seems to import, that this Government has a double sovereignty—the sovereignty of the United States, and the sovereignty of the State. Mr. R. thought there was but one sovereign in America, and that is the people; the public will is the sovereign power; and there are two sovereign machines—one for external purposes, and one for internal purposes. The people within a State are sovereign, and that State is limited by the restraints imposed in their own constitution, and by the power conceded to the General Government. Imposed by themselves, in their own constitution, or in the constitution of the General Government, their will is the power, where these restrictions are not found. When we hold any communion with foreign powers, we put on this armor—we use the machinery of the United States Government for this purpose; and with that machine is connected the different State agents. The governing power is not inherent in the Legislature of a State or nation; but they are machines through which the real governing power, the will of the people, operates. They are their agents. As to the Territory, then, they must either govern themselves, or they must look to some other quarter for government, or they must have none. They do not govern themselves, and the constitution has provided they shall be governed by the sovereign will of the people, as displayed in the national machinery, by this General Government.

As regarded this improvement in the Territory, Mr. R. said, it must always be a question of expediency; and believing it to be so, he was prepared to vote, and not only prepared, but he was eager to vote, to further the objects of that part of the bill which relates to the Territory of Florida. But he could not, consistently with his present impressions, vote for that part which relates to the States of Mississippi, &c. If the amendment prevailed, he should vote against the bill; and he thought it would have been most expedient, in many points of view, not to have brought forward this question, so far as it relates to the States in connection with the question, so far as it relates to the Territory.

Mr. KANE, of Illinois, said, this was a question he never had an opportunity of hearing discussed in Congress before; and he should not now rise to say one word, but for the intimation that there was no doubt but this question could be carried by a sufficient number of votes, connected with the further intimation, that most of the speaking on this subject had been made by those

who expressed doubts on the constitutional question. He did not see that the constitutional question raised here, was essentially connected with the object of the bill. There was nothing in the word *road* or *canal*, which, *ex vi termini*, imported an object of internal improvement. Was a canal, proposed to be cut across the Isthmus of Florida, an object of internal improvement? Did not all the reasoning that had been employed on this subject, go to show, that its object was to protect commerce? And the bill, as proposed to be amended, had in view the further object of the further protection of commerce, by opening a communication to the Mississippi River. The amendment proposed to appropriate a certain sum to make an examination; and when that examination shall have been made, if the report should go to show that the object of this canal was only for the purpose of internal improvement, then would be the time to raise this objection. But, if the report went to show that the further object was to accomplish the protection of the commerce of the United States, then this question could not arise. If it went to show that it would be an immense saving to the Treasury of the Nation, and, moreover, afford protection to a greater degree than would be afforded to the commerce of the United States by cutting a canal, than by building a fort, he would ask why the constitutional question should, in that case, necessarily arise? He merely wished to give his reasons why he should vote for the amendment proposed by the committee. He viewed the object of the bill as no more unconstitutional than those laws which provide for the survey of our own coast. Suppose the engineers had reported, that the best way of protecting the commerce of North Carolina, was by cutting a canal along the coast, would gentlemen say this canal was not to be cut, because canals are used as the means of facilitating internal commerce only? He thought not.

Mr. KING, of Alabama, did not intend to have said a word in the discussion of this subject, if he were not placed in a situation that required him to explain his reasons for the vote he should give. He was as much opposed to the violation of the principles of the constitution, as any man on this floor; and, in regard to those constructive powers, so dangerous to the liberties of the country, and to the rights of the people of the sovereign States, he should be the last man to attempt to exercise the power under such construction. But he thought the constitution had nothing to do with the subject now under discussion. Where was there any violation of State rights in authorizing the Government to make this survey? Did they not do it every day, under an express appropriation, year after year, without any of those fears about the constitution? If the Government of the United States had not the power of employing the Engineer Corps, to examine the state of the coast, with a view to fortify the harbors, rivers, &c., to facilitate the commerce of the country, what, he asked,

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were the powers of the General Government? He should vote in favor of this amendment, under the impression that it was right and proper that the Government should be informed of the advantages which would result from making this communication, by the examination of enlightened men; and when the proposition was brought forward to make an appropriation to open any canal, within the limits of a State, the assent of that State not being obtained, he should vote against it.

The bill was then ordered to be engrossed for a third reading, without a division.

MONDAY, February 27.

*Death of Senator Gaillard, President pro tem. of the Senate.*

The Senate met at 12 o'clock, and, after the Journal had been read—

Mr. HAYNE, of South Carolina, rose, and said: It becomes, Mr. President, my melancholy duty to announce to this House, that my respected colleague, the FATHER OF THE SENATE, is no more. After a faithful and uninterrupted service in this body, of more than twenty-one years, he has fallen, in the fulness of his honors, and in the midst of his usefulness. Though he had lived to see almost every friend who had entered with him into public life (and all with whom he served were his friends) successively retiring from the busy scene, or swept from the stage of existence—though he had for many years found himself the *oldest Member* of the Senate, yet he had not much passed the meridian of life, and we might have flattered ourselves with the hope that a long course of honor and usefulness was still before him. Mr. GAILLARD took his seat in the Senate on the 31st of January, 1805, and it is perhaps the highest tribute we could possibly pay to his memory to state, that he was four times successively re-elected to his high trust, and retained to his last hour the confidence of his fellow-citizens. In 1810, (when he had been but five years a Member,) Mr. GAILLARD was elected PRESIDENT PRO TEMPORE of the Senate, to which office he was *nine times* most honorably chosen, having for a period of *fourteen years*, presided over the deliberations of this Assembly. I am sensible that it is not admissible, on an occasion like the present, to indulge myself in a studied eulogium on the virtues of our departed friend; and I deeply regret that the office of touching briefly on his character, had not fallen to the lot of one who could have spoken from long experience, and in the eloquent language of an early and well-tried friendship. My personal acquaintance with my late colleague was comparatively of recent date. Since I have served with him, however, in this House, the mutual exchange of kind offices has never been, for a moment, interrupted, even by those unhappy differences of opinion which plant thorns in the path of the politician, and often estrange the dearest friends. Judging of his past course by what I have my-

self witnessed, and by the concurring testimony of his associates, I will not be accused of doing more than simple justice to the memory of our friend, when I say, that, during a term of service altogether unexampled in this body, he conciliated universal esteem and confidence. In his private intercourse with the Members, his mildness and urbanity won all hearts. In fulfilling his duties as a Senator, the solidity of his judgment and his dignified and unostentatious deportment, elicited the esteem and commanded the respect of his associates. But it was in the performance of the high duties of the PRESIDING OFFICER of the Senate, (which he discharged for a longer period than has fallen to the lot of any other man,) that the conspicuous traits of his character were most fully developed. The ease and fidelity with which he fulfilled these duties,—always arduous, and often of the most difficult and delicate nature—his perfect command of temper—exemplary patience—strict impartiality, and clear discernment—have never been surpassed, and seldom equalled. Whatever might be the state of his health, no labor was too great for his industry, no privation too severe for his patience. So thorough was his acquaintance with Parliamentary forms, and especially with the practice of this House, and such was the confidence reposed in his justice, that his opinion on all questions of order was considered as a binding authority. Though Mr. GAILLARD was not in the habit of engaging in debate, yet, when it became necessary for him to explain the grounds of his decision, or to shed the lights of his experience on questions before the Senate, no man could express himself with more simplicity, perspicuity, or force. I know not how better to sum up the merits of the deceased, than in the words of my venerable friend, (Mr. MAON, whose eulogy is no common praise,) and who lately declared "that Mr. GAILLARD was designed by nature to preside over such an assembly as *this*"—thus assigning to him, as his appropriate sphere, a station of no common dignity, and duties of a most exalted nature. Such was the man whose loss we are this day called upon to deplore. On this occasion it becomes us to mourn; and I know that, in paying the highest honors to his memory, we are giving utterance to the feelings of every Member of the Senate, by whom the recollection of the virtues of our deceased brother will be long and fondly cherished.

Mr. DICKERSON, of New Jersey, then rose, and said: the honorable gentleman from South Carolina has spoken of the character and services of his late distinguished colleague, in a manner highly creditable to the feelings of his heart. The facts he has stated have already become a portion of the history of this country. The services of his late colleague are to be found in almost every page of our statute books and our records, for the last twenty years. There are other facts, however, connected with his character, for which his memory will be

more cherished by his intimate friends, than even for his public services. His urbanity, his uniform mildness of deportment in his intercourse with his associates in this body, and while presiding over our councils, we have all witnessed; but the innate goodness of his heart could only be known to those with whom he lived on terms of intimacy. It has been my good fortune, said Mr. D., to be associated with him, as an inmate in the same families, for the last seven sessions of Congress—in which time, I have never observed the least approach to harshness or severity towards those with whom he associated, or the slightest departure from those rules, by which gentlemen ought to be governed, in their intercourse with each other; but, on the contrary, the most undeviating observance of the forms and customs of politeness, which give to social intercourse its greatest charm. For such a character, I could not but be inspired with sentiments of the most unfeigned attachment and respect. His society I have courted when he was in health—when in sickness, I have endeavored to soothe his moments of languor and distress; and I watched, with the most painful solicitude, the last ebbs of a life thus endeared to me. In the death of this distinguished individual, the country has lost an able and faithful servant—and I have lost a most valued friend—and I trust, that, while mourning over the loss of the public, I have the indulgence of the Senate in thus deploring my own.

Mr. DICKERSON then offered the following resolutions, which were successively and unanimously adopted:

*Resolved*, That a committee be appointed to take order for superintending the funeral of the honorable JOHN GAILLARD, deceased, which will take place at eleven o'clock, to-morrow morning; that the Senate will attend the same, and that notice of this event be given to the House of Representatives.

*Resolved*, That the members of the Senate, from a sincere desire of showing every mark of respect due to the memory of the honorable JOHN GAILLARD, deceased, their late associate, will go into mourning for him for one month, by the usual mode of wearing crape round the left arm.

*Resolved*, That, as an additional mark of respect for the memory of the honorable JOHN GAILLARD, the Senate do now adjourn.

The committee of arrangements, appointed in pursuance of the first resolution, were Messrs. HOLMES, BERRIEN, RUGGLES, VAN DYKE, and FINDLAY.

TUESDAY, February 28.

This being the day appointed for the funeral of the Honorable JOHN GAILLARD, a member of this body, no legislative business was transacted.

WEDNESDAY, March 1.

*Negro Slavery in South America.*

Mr. RANDOLPH, of Va. rose, and said he

wished to do what was with him a very unusual thing—not only to make a motion, but to make one asking information from the Executive branch of this Government. He had seen a proclamation purporting to have been issued by the celebrated General BOLIVAR. He had learned—and he had learned with satisfaction, as far as regarded the fame and reputation of that distinguished individual—that that proclamation had been disclaimed by the consular authority here as a fabrication; at least a fabrication so far as it related to that particular part of the proclamation which had attracted his attention. Mr. R. said he was glad of it; but although, said he, that proclamation may be a fabrication—and no doubt it is so—it is as unquestionably true as that proclamation is false, that the principles contained in that proclamation are the avowed principles of the renowned individual to whom I refer; they are the avowed principles of the Governments over which he exercises almost unbounded sway; they are the avowed principles of the people composing those States—if States they may be called which States are none—and therefore it is, said Mr. R., that I wish for some official information,—not to satisfy myself—not to delay any business that is, or may be, before the Senate; I do not wish to wait for it; but official information that may satisfy the American people as to the true character of those States.

It is well known, said Mr. R., that in his public message to Congress, the President of the United States has intimated to us, and to the world, through us, that an invitation of a certain character has been given to him, and that in consequence, ministers *will* be sent to the Congress about to be assembled at Panama. He hoped that the Ministers, whoever they might be, would be of that character and description who would labor under none of the odious and exploded prejudices, which revolted and repelled the fastidious Southern man from Africans—from associating as equals with them, or with people of African descent—that they may take their seat in Congress at Panama, beside the native African, their American descendants, the mixed breeds, the Indians, and the half breeds, without any offence or scandal at so motley a mixture. Mr. R. believed it was well understood as to the State—not the State in which the Congress is to be held, but in the immediate vicinity of the province where this Congress is to assemble—Guatemala—he believed it was considered as much a black Republic at this time as Hayti itself. There is, said Mr. R., a great deal of African blood in old Spain—in the south of Spain—though not all negro blood—from the opposite coast of Barbary. There is a further deterioration—if a deterioration it be—in the Creole Spaniards, in all the Spanish and Portuguese possessions, but above all in Guatemala, the immediate adjacent province to Panama, and in Brazil. Now these things, said Mr. R., which are of no sort of importance to some people,

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[SENATE.]

are of vital importance to that district and description of country, and not altogether contemptible, whether in point of extent or numbers, not quite unworthy of being taken into consideration in the deliberations and decisions of this body, and of the Federal Government. He would not detain the Senate farther than to suggest, that he had heard that this great man—he had no doubt he was a great man—a good man—there were a great many such great and good men—LAFAYETTE was one of them—at the commencement of the French Revolution—would not hear of any parley at all with what they called the imprescriptible rights of man; they played the whole game, they would not hear of qualification, and we see what this desperate game has eventuated in—extremes always beget one another. This General Bolivar, called the South American Washington—as every man, said Mr. R., nowadays, who has commanded a platoon, is a Caesar or a Hannibal, a Eumenes or Sertorius at least—so he is the South American Washington. I remember, sir, that when the old Earl of Bedford, when he was consoled with by a hypocrite, who wished in fact to wound his feelings, on the murder of his son Lord Russel, indignantly replied that he would not exchange his dead son for the living son of any man on earth. So I, Mr. President, would not give our dead Washington for any living Washington, or any Washington that is likely to live in your time, Mr. President, or mine; whatever may be the blessings reserved for mankind in the womb of time. I do know—the world knows—that the principle of the American Revolution, and the principle that is now at work in the peninsula of South America and in Guatemala and New Spain, are principles as opposite as light and darkness—principles as opposite as a manly and rational liberty is opposed to the frantic orgies of the French Bacchanals of the Revolution, as opposite as a manly and rational piety is opposed to that politico-religious fanaticism, which, I am sorry to see, is not at work only in the peninsula of South America and New Spain, but has pervaded, or is pervading, all this country, and has insinuated itself wherever it can, to the disturbance of the public peace, the loosening of the keystone of this constitution, and the undermining the foundation on which the arch of our Union rests. No, sir; they are as different as light and darkness—as common sense and practice differ from the visionary theories of moonstruck lunatics.

The Message of the President is before the world. The President of the United States has told us that he *will* act, and that he has the power. Let him—let him act—let him act on his own responsibility; but let the American people—and especially that part of the American people—that portion of them who reside south of the Ohio, and south of Mason and Dixon's line—know what are the deputies whom hereafter we are likely to receive in return from them, in character and color to our

Congress—that is what I want to see. I want this to open their eyes—I want, instead of public opinion reacting on us from uninformed public bodies, however respectable; from toasts given at public dinners, however respectable the guests; a Holy Alliance of liberty in opposition to a Holy Alliance of tyrants—I want the good sense of the people of the United States to be informed as to the fact; having the most perfect reliance on their decision when they shall have the facts, and having a disposition to submit most implicitly to that decision, whether it shall agree with my opinions or not: From these causes, I move that the President of the United States be requested to lay before the Senate such information as may be in the possession of the Executive, touching the principles and practice of the Spanish American States, or any of them, late colonies of old Spain, in regard to negro slavery—I will submit the motion in writing.

[Having done so; and the resolution having been read—]

Mr. RANDOLPH again rose, and said he wished to supply an omission in the remarks he had made. It is, said he, generally of public notoriety, that the island of Cuba has been in a state of alarm from a threatened invasion from these Spanish American States; and that the chief cause of that alarm arises from the principles of those States in reference to this very question. Cuba, possessing an immense negro population, which has been increased since the destruction of St. Domingo, incalculably, by importation, as well as by natural means—Cuba lies in such a position, in reference to the United States, and especially to the whole country on the Gulf of Mexico, as that the country may be invaded from Cuba in row-boats; and, in case those States should invade Cuba at all, it is unquestionable that this invasion will be made with this principle—this genius of universal emancipation—this sweeping anathema against the white population, in front; and then, sir, what is the situation of the Southern States? I throw out these only by way of hints; it would not be decorous, in a preface to a resolution, to enter into an elaborate argument, which I could do. This is one of those cases in which the suggestions of instinct are worth all the logic in the world—the instinct of self-preservation. It is one of those cases in which our passions instruct our reason. I shall not consider whether the President of the United States will send these Ministers or not—he says he will do it, and he is generally understood to be a man of his word—at least, as much so as to do what he has officially said he will do. But I must consider how far I feel disposed, by my vote, to pledge Virginia in the common cause of States possessing these principles—and to place our neutrality at the disposal of a belligerent Congress.

Mr. R. then gave notice that he should respectfully ask for the consideration of the resolution to-morrow morning.

*Amendment of the Constitution—Limitation upon Federal Appointments of Members of Congress.*

Mr. BENTON, of Missouri, from the Select Committee, to which was referred the proposition to amend the Constitution of the United States, with respect to the appointment of Senators and Representatives to offices under the Federal Government, made an argumentative report on the subject, of considerable length, and, it may be added, of much ability, concluding with proposing the passage of the following joint resolution, on the principle of which, the report states, the committee was unanimous :

*Resolved, &c., That the following amendment to the Constitution of the United States be proposed to the Legislatures of the several States, which, when ratified by three-fourths of said Legislatures, shall be valid, to all intents and purposes, as part of said constitution :*

*"No Senator or Representative shall be appointed to any civil office, place, or emolument, under the authority of the United States, until the expiration of the Presidential term in which such person shall have served as a Senator or Representative."*

The report and resolution having been read—

Mr. DICKERSON, of New Jersey, inquired whether the committee had not agreed to recommend that the exclusion from office should apply not only to the time for which each Senator and Representative should be elected, but to one year thereafter?

Mr. BENTON replied, that the committee had not agreed on the precise terms of the resolution, but only on points—on the substance, not on the form. On the principle reported, the committee were unanimous.

Mr. RANDOLPH said he liked the suggestion of the gentleman from New Jersey, and not the less, said he, because it agrees with one of high authority, Horace, who says, "*Nemo prematur in anno.*"

The resolution was then, on the motion of Mr. BENTON, read the second time, and made the special order of the day for next Monday week; and, on the motion of Mr. HOLMES, 1,500 copies of the report and resolution were ordered to be printed.

THURSDAY, March 2.

*Negro Slavery in South America.*

The Senate took up for consideration the following resolution, submitted yesterday by Mr. RANDOLPH :

*"Resolved, That the President of the United States be requested to lay before the Senate such information as may be in the possession of the Executive, touching the principles and practice of the Spanish American States, or any of them, late colonies of old Spain, in regard to Negro slavery."*

The resolution having been read, and the question being on its adoption—

Mr. HAYNE, of South Carolina, said he had listened with great attention, and certainly with much interest, to the eloquent remarks made

by the gentleman from Virginia, (Mr. RANDOLPH,) yesterday, on the principles and policy of the new States of South America, in relation to the slave question. It was a subject on which no one, coming from the part of the country which he represented, could possibly be indifferent. The gentleman from Virginia had given us a clear, and, doubtless, a very accurate statement of the principles of these new States. Mr. H. believed, that the facts connected with this subject were notorious, and were as well known to the Senate now, as they could be from any communication the Executive could make in answer to the call proposed in the gentleman's resolution. Whether the Proclamation, attributed to the LIBERATOR, was genuine or not, this House and this nation are not now to be informed that the new Republics were marching under the banner of universal emancipation. Mr. H. was, therefore, induced to doubt the necessity of calling on the President for information which was already in their possession. Certainly such a call ought not to be made, unless there was some reason to believe that it would furnish us with some facts with which we are not already acquainted. Mr. H. said he did not rise to oppose the resolution, but merely to suggest the propriety of postponing the consideration of it for a few days, in order to give time for further deliberation as to the necessity of acting upon it. Having some doubts on that point, he hoped the gentleman from Virginia would not object to the postponement of the resolution to Monday next, which Mr. H. moved accordingly.

Mr. RANDOLPH then rose, and said, I had certainly not intended to have said one word more on the subject of this resolution, in case it should not meet with opposition; and, as a matter of courtesy, certainly should acquiesce in the request of the gentleman from South Carolina, if there was any probability of getting the motion taken up on a day fixed for the proposed amendment of the constitution. But, at the same time, I hope that gentleman will pardon me for saying that the fate of my resolution reminds me of a very favorite old Spanish proverb of mine—for, although I am not very much smitten, or inoculated with the Spanish American fever, yet, the old Spanish proverbs are great and deserved favorites of mine, being perhaps the most pithy and pungent in the world; it is this—save me from my friends, and I will take care of my enemies.

I did not apprehend, said Mr. R., that any gentleman here would have raised any opposition to this resolution. Sir, this session is drawing to a close, I hope: for it will very soon be time to plant corn. Under existing circumstances, I wish this resolution to be acted on now: therefore, though it is no very great time from this to Monday, yet, as that day is assigned to a *special* order on the amendment of the constitution, I cannot consent—and I hope the gentleman will pardon me in saying so—I cannot consent, by my vote, to the

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postponement—deeming it equivalent to a rejection of the motion—though, if it be the pleasure of the Senate to decide against me, I shall submit to it, as I always do to the majority, I hope with decency—but without the slightest change in my opinion—as to the expediency of the course proposed.

Sir, said Mr. R., I can say with a sincerity of heart that no man can question the truth of, that it is a matter to me of mortification and distress, that I have had so often, of late, imposed upon me, as I conceive, (whether truly or falsely,) the duty of throwing myself on the attention of this body. It has not been my habit elsewhere; it has not been my habit of late years more especially—indeed, I have understood, since I took my seat in this body, that an imputation of a contrary nature—that I should be here an inactive member, a slothful public servant—was feared by some, even of my friends, and was the strongest amongst the objections of those candid adversaries, who damn with faint praise—to my being here at all; and while I disclaim that motive, it is possible that I may be unconsciously actuated by it. But, sir, under the circumstances in which I stand—in the place in which I stand—[Mr. R. was standing in Mr. TAZEWELL's place, who is absent on account of family sickness]—in the situation in which the State of Virginia is placed by the absence of my associate—and in which I am happy to say she is placing and has placed herself in array—in array against this Government—no, sir, not this Government, but the mal-administration of it—it is under these circumstances that I have been, as I conceive, bound in duty to offer my, perhaps, crude conceptions—but which have been as well concocted as long and patient thought could digest them—to the attention of this body. I know, sir, that the habit of frequently addressing this, or any other legislative body, but this body more especially—has a tendency to cheapen far greater talents than any that I possess, or ever laid claim to, and to impair the value even of the greatest abilities. I know, sir, that, in this body, which is in itself a *Congress*, consisting of deputies from sovereign and independent States, co-ordinate and co-equal; where the least is equally on a footing with the greatest—where a State, which sends but one member to the other House, is on a footing with one that sends forty, and on a footing there, too, under certain contingencies foreseen and provided for by the constitution, that, for any individual member too frequently to obtrude himself on its attention, is fatal not only to any little reputation that he may have happened to acquire in the course of his public life, but—what is of far more consequence—to his capacity to be useful to the power that sent him here. It is a wise and salutary jealousy on the part of the Senate. I know, sir, that this is a body, above all others, in which they “shall not be heard for their much speaking;” in which “vain repetitions” do as little good as we know they

will do in another place; and yet, sir, circumstanced as I am, I am compelled not only to break through that rule of propriety, which otherwise would restrain me, but to be guilty sometimes of those very “vain repetitions” also. May I hope to be pardoned for this, not only in consideration of the peculiarity of my situation—of my condition—but in consideration of a defect—whether of nature or of education, it is perfectly immaterial—perhaps proceeding from both—a defect which has disabled me, from my first entrance into public life, to the present day, to make what is called a *regular speech*—which, sir, like some other regular things, although constructed according to every rule of criticism, is sometimes extremely dull—not always convincing. There is no positive fault in the speech, or composition; the unities are all preserved—there is no fault to be found with it, but as to its general effect, which is a want of effect altogether. Sir, although I give to the subjects submitted to the Senate the most patient consideration; though I turn them, and re-turn them, over and over again, in my mind, yet when I come to utter the results of that rumination, I am compelled to do so as an irregular—rather as a partisan officer, than according to the regular art military; as an improvisatore—that I believe is the name which the Italians give to those who speak, not without much previous thinking, indeed, but without the book, or even without notes. Sir, in respect to these regular arguments, it has often struck me that they resemble, in more regards than one, the modern invention of a chain bridge—which, provided the abutments and fixtures are perfectly strong, and provided there is no defective link in the whole chain—are amongst the finest and most useful specimens of human ingenuity: but, sir, when we reverse the proposition—when the abutments are not sufficient—and there is one single link which is defective—one is as good—as bad, rather, as a thousand—that one is fatal to the whole structure, and souse down into the water comes the unwary passenger, who trusts himself to the treacherous edifice. There are artists, indeed—and some of them not far off either—who have the skill to elaborate those technical regular arguments of induction with such exquisite finish as to defy the eye, or even the touch of any man alive; but, while they puzzle and confound the understanding, they can never convince it, because they lead us to such monstrous and frightful conclusions, that no fair exercise of that reasoning faculty which has been given us by our Maker for our guide, can bring a plain man to. Here is a case, in which, if it be not safe to reason to conclusions, which perhaps is too much my habit; it is quite safe to reason *from* conclusions. Whenever any chain of reasoning, however learned and ingenious it may be, leads to conclusions so monstrous as to offend the common sense of mankind, I say that, although you may not be able to detect in which link of the argument



the defect is, yet you know, from the results to which it carries you, that it is radically defective—that there is a something somewhere about it, although neither your eye nor your touch can detect it, that renders it radically defective and unworthy of trust; and if I were called on for an illustration, I could give it, and would give it, in the opinion of the Supreme Court, in the case of Cohens against the State of Virginia.

Sir, I know there are gentlemen, not only from the Northern, but from the Southern States, who think that this unhappy question—for such it is—of negro slavery—which the constitution has vainly attempted to blink, by not using the term—should never be brought into public notice, more especially into that of Congress, and most especially, here. Sir, with every due respect for the gentlemen who think so, I differ from them, *toto celo*. Sir, it is a thing which cannot be hid—it is not a dry rot that you can cover with the carpet, until the house tumbles about your ears—you might as well try to hide a volcano, in full operation—it cannot be hid—it is a cancer in your face, and must be treated *secundum artem*; it must not be tampered with by quacks, who never saw the disease or the patient, and prescribe across the Atlantic; it must be, if you will, let alone; but on this very principle of letting it alone, it is that I have brought in my resolution. I am willing to play what is called child's play—let me alone, and I will let you alone; let my resolution alone, and I will say nothing in support of it: for there is a want of sense in saying any thing in support of a resolution that nobody opposes. Sir, will the Senate pardon my repeating the words of a great man, which cannot be too often repeated? A small danger menacing an inestimable object, is of more importance, in the eyes of a wise man, than the greatest danger which can possibly threaten an object of minor consequence. The question before us is, is this an object of inestimable consequence? I do not put the question to you, sir. I know what your answer will be. I know what will be the answer of every husband, father, son, and brother, throughout the Southern States; I know that on this depends the honor of every matron and maiden—of every matron (wife, or widow) between the Ohio and the Gulf of Mexico: I know that upon it depends the life's blood of the little ones, which are lying in their cradles, in happy ignorance of what is passing around them; and not the white ones only: for shall not we too kill—shall we not re-act the scenes which were acted in Guatemala, and elsewhere, except, I hope, with far different success; for if, with a superiority, in point of numbers, as well as of intelligence and courage, we should suffer ourselves to be, as there, vanquished—we should deserve to have negroes for our taskmasters, and for the husbands of our wives. This, then, is the inestimable object which the gentleman from Carolina views in the same light that I

do, and that you do too, sir, and to which every Southern bosom responds: a chord, which, when touched, even by the most delicate hand, vibrates to the heart of every man in our country. I wish I could maintain, with truth, that it came within the other predicament—that it was a small danger—but it is a great danger—it is a danger that has increased, is increasing, and *must* be diminished, or it must come to its regular catastrophe.

Mr. President, within the last thirty years, or thereabouts—for I have been contemporary with the facts—a total change has taken place in public opinion, in Great Britain—which always acts as possessing a common language and almost a literature and laws in common, she must and she ought to act with great force on us—and in certain other parts of other countries, which I shall not now designate, in reference to this question. There was a time, sir, when the advocates for the abolition of the slave trade found, in almost every bosom possessing common humanity, and common sense, a friend. There were some few, to be sure, old veteran Swiss of State, who, upholding all administrations, and all abuses and corruptions, had gone more than knee-deep in corruption—followers perhaps of Dundas, fellows of old George Rose, pledged five fathom deep in corruption—who still upheld that abomination. There were some few, indeed, of a very different description. From my early childhood, all my feelings and instincts were in opposition to slavery in every shape; to the subjugation of one man's will to that of another; and from the time that I read Clarkson's celebrated pamphlet, I was, I am afraid, as mad—as Clarkson himself. I read myself into this madness, as I have read myself into some agricultural improvements; but, as with these last I worked myself out of them, so also I worked myself out of it. At the time, sir, that the abolition of the slave trade was made piracy, and we had as good a right to make it treason, if the constitution had not already defined treason—for it is as much treason as it is piracy—did I say as good a right?—I say you have the right—it has been settled by practice here at least already—you can define treason by law—for what is the constitution, opposed to the established practice under it? what is the old version to this, which is only one of the new readings *longe emendatior*, of the old edition of the constitution? You have, in a time of profound peace, suspended the privilege of the *writ habeas corpus*—the personal-security-act—so far as a bill passed by the Senate could do it. I do not often agree with William Cobbett, but I wish it had this name of personal-security-act, that the people might understand its real meaning and importance better than they seemed to do, when they gave their confidence to them that proposed and supported that suspension, in the teeth of an express constitutional prohibition. Then, the society was got up, of which I was a most unworthy member;

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but, so far from keeping the faith, I have become a backslider; and whether I have left the society, or the society has left me, I cannot tell, and do not care. I had not much faith in it from the beginning; but I thought it a very desirable thing, and still think it to be a very desirable thing, to get rid of the free negroes and colored people of this country, on the principle, and with the view of promoting the quiet, safety, and happiness, of the slaves themselves, as well as of their masters at home. "It is a vile bird"—and I shall not do any thing to disparage the nest, although it be no longer mine. Without meaning to say a word, at this time, against this society; as an experiment, I must say it has failed; and, so far as it has done any thing, it has done mischief instead of good.

As regards the principles of those who were the first promoters of the abolition of the slave trade—I don't say it of this society—I am borne out by the facts when I assert that they have held, and yet hold, perhaps I ought to say, endeavor to hold, a language *esoteric*, and a language *exoteric*—one language for the novice, and a language for the initiated: or, to speak in terms more familiar to us, a language *official*, and a language *confidential*. They affected to have nothing in view but the abolition of the slave trade. Sir, they had another object—they had an object in view, which *now* they have the courage to declare, for which they have very lately united themselves into an anti-slavery society—they have given no small impulse, if not the first impulse, to this *black* "ball of Spanish American Revolution." It is they who have done it—it is they who have been the fosterers of Hayti: for I could name illustrious names that are laboring under delusion as strong as that which led away the French Convention, when they thought they were establishing liberty, equality, and fraternity, on a foundation slippery and red with human blood and judicial murder. I will name, I must name Wilberforce—I will name master Stephen, the celebrated author of "War in Disguise," and "The Dangers of the Country"—Macaulay, the principal conductor of the "Christian Observer." I do not mean to include all of that numerous and respectable body of men, who generally think and act with them, as equally intemperate; because I know that some, and believe that others, of those who associated with them, in religious opinions, who do not see, or seeing do not approve, the rash ulterior measures of these well-meaning, but misled men; amongst them I would name, if I dared to do it, the venerable President of the English Bible Society.

Sir, the same great authority whom I before quoted, lays it down as a principle, that, when men are furiously and fanatically fond of any object, of any set of opinions whatever, they will sacrifice to that fanatical attachment, their own property, their own peace, their own lives, and (he adds) can there be a doubt that they

would prefer it to the peace of their country? Will the love, then, of another country, of Jamaica, or the Southern States, be a consideration strong enough to induce them to halt—to pause? Fanaticism, political or religious, has no stopping-place short of Heaven—or of Hell. All history upholds me in this. What were the crusades? I speak it in sober sadness—they were, in my opinion, as regarded their object, incomparably more worthy, more desirable, in the object, more wise in the means taken to attain it, than this modern *black crusade*. What did they fight for? For the sepulchre of the Redeemer of an otherwise undone world. It was a noble object, however mistaken the principle. But what were they fighting for? For a hewn stone, if it yet existed, which had belonged to a rich and pious Jew of Arimathea—for they knew—they believed—they said they did, and no doubt they were sincere—but they did not recollect that it was not a place of human sepulture—that the body, never subjected to the animal law, was gone—that the incarnate part also had ascended to its Father that is in Heaven. They might as well have got up a crusade for the manger in which the lowly infant had lain in its swaddling clothes; still here was a sentiment, something elevating and ennobling, that the heart is better for having felt; and whose blood did they seek to shed when they poured out their own like water in this cause? That of the Saracens—of infidels—of Mahounds and Termagants—who were painted in the same colors by the priesthood and fanatics of that day, that the Pharisees and fanatics of this day, paint every man in, whose misfortune, or whose good fortune it is, to be master of slaves. Sir, I have no hesitation in saying, that the affections of these men whom I have named, are more strongly riveted upon the French African descendants of Hayti—on the negroes of Jamaica and Sierra Leone—than they are not only on us unfortunate Southrons—than they are on their own fellow-subjects of Jamaica—and I verily believe of Old England also, of Lancashire or Yorkshire. There was once a time, sir, when a ministerial member had the indiscretion—no minister can *always* stop the mouth of an indiscreet friend—to say—it was during the Prussian war, which consisted of the battle of Jena—that Hanover ought to be as dear to England as Hampshire; I suppose for the sake of the alliteration. I do believe that I should not be far wrong in saying—I know that to a great portion of these misled men, the black population of the West Indies and the Africans of this country, are dearer than their English fellow-subjects: and why so? I judge them partly by their language which I have heard—not in private—but in Freemason's Hall—in London—with an applauding auditory of thousands—but chiefly by their acts, which never lie. I have heard as pious, as good a man, apparently, as ever lived—I believe—I don't know it—he had every characteristic of a good man and pious

Christian, except this mania—setting this aside, he was all that could be wished, and in this he manifested that there was no guile in him—he is an officer in the British army—I could have had him cashiered—say that, in case of a revolt in the island of Jamaica, he should feel himself compelled to take part with the blacks, as the oppressed party. I say that is a general sentiment throughout Old England—I say *Old England*—I wish it may not extend anywhere *else*—I hope it does not. One thing it behooves me to say—one act of justice it behooves me to do—and I trust I shall never refuse justice to any man—up to this time, the conduct of the President of the United States—I mean prior to his becoming President of the United States—has been such as no Southern man could take exception to, in this behalf, at least—I restrict my admission to that. I will go farther in saying, that this body has already shown, that it possesses the will, as well as the power—which I trust it will exercise on more than that occasion—of resisting influence within, and clamor from without—I speak in reference to the Treaty on the subject of the Slave Trade and the Right of Search. Sir, the Senate have acquitted themselves like men, like Senators, like conscript fathers; I hope, as I believe, that they will never acquit themselves otherwise—“Be just, and fear not.”

And now, sir, one word. I will readily agree that, if the gentleman from South Carolina had made the motion to amend, I would have accepted his modification with great pleasure, if it had been to this effect—to inquire officially what proportion the black, the sambo, the mulatto, and the mestizo population, and the proportion that the Indians, the mixed, and the half-breeds, of that race, bear, respectively, in those States, to what is called the white population—for a great deal of it, although not the major part, is white population, whether Creoles or natives of Old Spain. This is an important thing to be taken into consideration. If, therefore, the Senate will indulge me in not postponing my resolution, I will so modify it as to obtain the thing by the best authority accessible to us.

Sir, I said yesterday, that I was very glad to find that this Proclamation of General Bolivar was denied by the consular authority here. I said so on the information of a gentleman, whose information on such subjects I very much respect, and of whose accuracy, in this instance, I entertain no doubt; but when I said so, I did not mean to say, that the disavowal by the consular authority would satisfy me, when there was a regular diplomatic envoy from that court at our court. I would follow the good rule of courts that I am more conversant with—not to take a worse proof when a better was within my reach; therefore I shall wait with patience, and trust (whether this resolution shall pass or be rejected) that the President will be enabled to inform this body that the proper Spanish American Minister—I

don't know his name or designation; I never saw one of them in my life—has disavowed this Proclamation. That he can disavow the principles, which, I agree with the gentleman from South Carolina, are of general notoriety, is impossible. But, sir, there is a wide difference between invading another country, with this proclamation of negro emancipation in the van, and setting the slaves of that country to cutting their masters' throats—by way of making allies of them—by way of effectually invading and conquering the country—and doing with them in your own country whatever you please, however wild and mischievous—and, indeed, wicked—it may be. If the State of Virginia was, in a moment of frenzy, to pass an act of general and immediate emancipation—that would be one thing. If the State of Virginia—supposing the control of this Government to be out of the way—should go on a crusade into the Carolinas with these principles before them, and the negroes behind them, it would be doing a very different thing. It is, therefore, of importance to us to know, officially, if we can, whether these provinces mean to make use of this instrument of revolution and conquest, as the French Convention made use of their weapons, their *liberté, égalité, fraternité*, against the rest of the world. It is of the utmost importance that we should know it officially, although it be a matter of notorious alarm to Cuba, as I said yesterday. Cuba has labored under this apprehension, not without cause, and has taken means to guard against it.

There is another circumstance to be taken into our estimate of danger, whether on this quarter or on that of our neutrality, and that is, the present condition of these former colonies of Spain—these South American States—whether it be specific and neutral, like our own, or, as it notoriously is, belligerent. Have they not armies on foot, and navies afloat, and does this count for nothing in the calculation of wise men and statesmen, as to what they may do, or we may suffer from powers so circumstanced? Are we to consider and treat with a country as if in time of peace, and with its armor thrown off? Are we to consider what she even says, then, in the same light that we would consider it in, when she is bristled with steel, armed cap-a-pie for war? The two cases are very different—whereas they are belligerent, the United States are pacific—every thing is on the peace establishment—our armor thrown aside, and our attitude that of the most amiable and enviable repose. The United States are, moreover, not only what every peaceable people ought to be—*neutral*; but they have a treaty of amity with Spain; they have a positive stipulation with Spain to do no un-neutral act. Does this, or does it not, affect the question? It does. It affects the question vitally, as affecting the capacity, as well as the disposition, to act without breach of neutral duty and of faith, express as well as implied. How long is it since our neutral

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rights ceased to be dear to us? Do they not imply neutral duties? How long since the faith of the United States has become so cheap? The warlike attitude and armor of these beligerents will, with every man of sober sense, enter into the calculation of their means of enforcing their principles of universal emancipation upon us, through the instrumentality of an invasion and servile war of insurrection in Cuba—for, sir, a wise man will disregard threats coming from a quarter which has no capacity to enforce them; they indicate only a silly malignity, that is best treated with contempt. Any man who should be blockhead enough now to say, that he would take the President of the United States out of his palace in the dead of night, and put him into a boat, and take him down the Potomac, and ship him off to a foreign country, would be taken for a moon-struck madman. Yet he who is said to have once uttered that threat, passed for a man of very uncommon abilities. But this, sir, is a threat which the parties have not only the capacity, as well as the disposition, but the peculiar capacity to carry into execution; and shall we stand idle? Shall we sit still, like those Roman Senators who had no other resource, Mr. President, until the Gauls shall come into this room, and after offering indignity to our persons, finish the tragedy with our blood? No, sir; we are not brought to that point—the capitol is untouched; the sentinels, it is to be hoped, are vigilant; the God Terminus has not gone back—yes, sir, he has gone back—he has given way, and, at the very point, too, of weakness; and he who is now considered to be the right arm of this administration, was the loudest and fiercest denouncer of that retrograde movement, and of the councils under which it was made. I speak of the cession on the south-west; I speak of Texas, of the cession adjacent to the country known to us as New Mexico; of the cession of the Upper Red River; of the cession of the Gates, of the Keys of New Orleans; and shall Louisiana support *this*, whether it be the man or the measure? I hope not. Yes, sir; they have the capacity and they have the will; and, unless we take some steps to arrest it, the evil must come home to your bosom, to mine; and we must then do what all other people do under like circumstances, never fail to do, or perish: for, sir, when things get to extremes, the ink and parchment fail. It will signify very little what my notions, or yours, or any other man's notions may be, of the powers of the Federal Government or the rights of the States, because, according to the exigence of the case, we shall act for our self-preservation: “for, as self-preservation is in individuals the first law of nature, so it is with societies.” The Southern States will look to their safety as States and as individuals, whatever the ink and sheepskin may say, or be made to say; whatever Congress may decree.

If, said Mr. R., I were, what I am not—an acute philologist—I should sometimes amuse myself

with the manner in which words slip from their original meanings, and come to purport something very different from what anybody ever attached to them when they first came into use: the word *sophist* (a wise man) got so much into disrepute, that philosopher (a lover of wisdom) had to supply its place; the word *libertine* meant what a liberal means now; that is, a man attached to enlarged and free principles—a votary of liberty; but the libertines made so ill a use of their principles, that the word has come (even since the days of Shakspeare) to be taken in a bad sense; and *liberal* will share the same fate, I fear, if it contracts this black alliance. There are some other words, such as *principle*, “*conscience*,” which are also in great danger. But I am coming to a word which is in the mouth of every man in this country every day, and all day long—it is *Congress*. Why, sir, although this body, this Senate, be indeed, in some sense, a Congress of deputies from sovereign States, yet—the constitution to the contrary notwithstanding—for if there is any thing that I find in the constitution itself which I deem not to be true, I shall not scruple to deny it—or in any bill of rights, or declaratory act, or anywhere else—always excepting the Bible—because I do not believe that there is any thing in that book that is not true—not meaning, however, to make a confession of my faith—this word Congress was properly applied to the deputies first assembled at Albany, to bring about a closer colonial union, and afterwards at Philadelphia, to create a Confederacy that might enable us to carry on the war with more effect against the common enemy. At first, she was not the common enemy—we did not so consider her, or call her—we did, indeed, call her our unkind mother, but we professed the most dutiful love for her, and only asked to be treated on the footing of her other children. We distinguished between her and the unworthy hands to which she had committed her authority—but avowed that, if she would deny us the rights which we claimed as British subjects, as her legitimate children, of voting away our own money; would insist and persist to do what we suffer every day to be done here—plunge her hands into our pockets *ad libitum con amore, da capo*, for purposes utterly foreign to our interests—we should be driven, however reluctantly, to resist her injustice.

This was a Congress—its object was the formation of a new Confederacy, and the name is endeared to every man of the good old thirteen States of America, and is deservedly dear to them and to the shoots, the scions that have sprung from them—the other States; and what are the other States? They are bone of our bone, and flesh of our flesh. This word Congress, sir, was deservedly dear to the American people: for out of it grew their Confederation and their Independence; and when the new constitution was made, the framers of it were men well enough versed in human nature to know

that words were things, and they called the new project the Congress of the United States of America. It is a Congress by force of the constitution, but, to all intents and purposes, it is not a Congress according to the meaning of the word in the English language. What, then, is it? It is a convention, or legislature, like another proposed Congress for a confederacy. Suppose that, during the late war, every State in the Union had sent a deputation, as Mr. Jefferson had said—to "the Hartford Nation"—it would have been a Congress, such as we are now invited to. Suppose, now, under the constitution, a convention, to be got up to amend the constitution, according to its provisions in article five, will it not be what the constitution declares it to be—a convention—a coming together of States for particular purposes? Now, sir, in reference to that on which my resolution bears: suppose that, during the last war, France, or any other neutral power—France was not a neutral power—any neutral power, if such could have been found—had sent deputies to our Congress at Hartford, for purposes certainly not of embarrassing, much less endangering, the Union, but of giving force and effect—such I understood to have been the avowed motive of that meeting—to the war—could they have shown authority from their Governments for so doing? would they not have partaken of your belligerent nature and character? I go further, and say, that, in a Congress of States, it is a very strange sort of bargain that the Congress should be constituted by deputies from each of its States, and that we twenty-four States should be represented by deputies only from the aggregate body of States. If we are to go, let *us* go, the Representatives of all the States; let each of our States be represented as well as their States; and why not? This is the fact—they, as a Spanish American Confederation, are one body politic; we, as a North American Confederacy, are another. Who ever heard of a Congress of Ministers from two Governments? No, sir, I should as soon expect to hear of a concert of two instruments; we might have a duet; but who ever heard of a Congress where there were only two parties? We have a treaty with Great Britain that makes special provision for an umpire to decide in certain cases of difference. Our umpire is dead—he does not sleep, he is dead—and his death will constitute to any man who can and will look before as well as after—who is not engrossed with the present—and that with his own advancement—a consideration that will make him pause before he does any thing that might influence, directly or indirectly, the peace, the safety, the neutrality, of these United States, which, under the new circumstances in which the world is about to be placed, we shall find it no easy matter to preserve without any foreign entanglements.

Mr. Fox was a statesman; he was not only an orator, confessedly the first debater that the world ever saw, but a statesman. I am one

of those who think that this world has been much injured by Parliamentary eloquence; by a false notion, that ability of this sort is a necessary qualification for Government; and England to her dying day—if she ever does die—will repent her of the dialectics of Mr. Pitt. He was admirably qualified for a Professor of Rhetoric; he would have filled that chair well at Cambridge—I do not mean Cantabrigiæ Nov-Anglorum, but Cambridge in Old England—but as a Minister, his great measures all failed. He was, indeed, a most expert gladiator on the floor of Parliament—a good *Palinurus* in smooth water—but he, too, must be a soldier, and from that day, as to his measures, they every one failed; and his friend and admirer, Mr. Windham, assigns their failure in justification of his vote of a refusal to grant him the honor of a public funeral—for there, and everywhere but here, a public funeral counts for something as it ought to do—on the ground that public funerals and monuments should never be erected except to eminently *successful* statesmen, generals, or admirals, not to the defeated—and the public funeral and the monument of Pitt, Mr. Windham, with his manly independence and sagacity of character, was unwilling to pay for—(he did not grudge the money—that was another consideration—he voted to pay the debts of Pitt)—and that funeral and monument voted to the defeated statesman—the monument to the pilot that did *not* weather the storm—was the forerunner of the monument voted to General Pakenham for his glorious attack on New Orleans. This is the way to render that cheap and worthless, which is above all price; that which indeed may well be called the cheap defence of nations.

Mr. Fox said, speaking of the history of James the Second and Charles the Second, that of all Governments in the world, restorations were the worst: he applied it to the restoration of the House of Stuart, not against the consent of the people—but by general acclamation, which soon led to as general a vote of expulsion, of that misguided, unteachable, bigot race. The House of Bourbon, restored by foreign bayonets, forced upon France against the wishes of a large majority of her people, was not then an example to which the illustrious historian could have referred—a yet stronger proof of the truth and sagacity of that wonderful man. There is, said Mr. R., another restoration of *another* illustrious house—I push the parallel no further—by what means it has been brought back upon us, I shall not *now* stop to inquire, though in my heart and conscience I believe the sceptre having been clutched, this is the last four years of the Administration of the father, renewed in the person of the son. I am not afraid of the re-enactment of the sedition law—no, not at all. One of our diplomatists said, in Paris, I think, speaking of their Protean vexations of our commerce, that the mode only, not the measure, was changed—so

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it is here—for old federalism, we have ultra federalism—I do not speak in the future, but in the *plus quam perfectum*, in the preterpluperfect tense.

But, sir, I shall be told, perhaps, that there is only a *nominal* war between Spain and these belligerents—that there is nothing else—a war of name—and that Spain is unable any longer to wag a finger—to use a familiar phrase—or any thing but her tongue in the contest. If that be the condition of Spain, by what arguments can kingcraft and priestcraft be prevailed on to renounce this nominal claim, which will, like some others, keep cold until the chapter of accidents may realize it. Did Philip the Second ever recognize the independence of the Dutch, the illustrious ancestors of my friend [Mr. VAN BUREN] on my left, when that independence was more firmly established than his own? No, sir—Spain is made of sterner stuff. Truce after truce was patched up without any such recognition—and they were the united *Provinces*, and so remained till the French gave the *coup de grace* by the true fraternal hug. What, sir, was the condition of the war between England and France a little while ago—one not having a ship at sea, except a few frigates, which she employed in burning our ships in a friendly way, so as to induce us to join in making a diversion in aid of her crusade against Moscow—from which I hope we shall take warning: for that attempt was not only plausible, but promised success—was quite practicable, compared with the crusade to which I have alluded—and England had not a man, at the time I speak of, after the battle of Jena, in arms on her side, on the continent of Europe—not one man; and there they stood, a complete non-conductor interposed between them, except the United States, who received the blows of both!

But, though that war was for a long time little else but a suspension of arms, from the inability of each to attack on the other's element—was it nominal—was it war like a peace, or even a peace like a war, as was said of Amiens? Oh, no—old England had nailed the colors to the mast; she had determined to go down rather than give up the ship. She wisely saw no safety for her in what might be called a peace; and it was a glorious determination: and it is that spirit—it is not thews, muscle—though I have the greatest respect for the authority of the gentleman from Kentucky (Mr. ROWAN)—it is not *brawn*, it is that spirit which gives life to every nation—that spirit which carries a man, however feeble, through conflicts with giants, compared to him in point of strength, honorably, triumphantly. Sir, I consider the late conflict between England and France—England against the congregated continent of Europe—to say nothing of any other make-weights in the scale—confident against a world in arms—as far surpassing, in sublimity of example, the tenaciousness of purpose of Rome during the second Punic war, as that surpasses any of our famous Indian wars and

expeditions. It is a lesson of the constancy of the human mind, which ought never to be thrown away; and I have sometimes been inclined to believe that it has done that nation more good than—I know I make a dangerous admission—than the debt accumulated by the war has done her harm. But when we look at her present condition under the operation of that system, I think we shall pause, as she might have done, before we take any measures that may lead to a suspension of specie payments, to the dissolution of all law, and of all morals; to that state of things which places the honest man not merely on a footing with the dishonest, but far below him.

But, sir, perhaps I may be told, that in case I do not accede to the proposition of the gentleman from South Carolina, the answer is very plain and triumphant to my resolution. That the principles of these South American States are the principles that were of high authority on another great question—the Missouri question—are the principles of the Declaration of Independence. What more will you have, what more can you ask? What resource have you now left? Sir, my only objection is, that these principles, pushed to their extreme consequences—that all men are born free and equal—I can never assent to, for the best of all reasons, because it is not true; and as I cannot agree to the intrinsic meaning of the word Congress, though sanctioned by the Constitution of the United States, so neither can I agree to a falsehood, and a most pernicious falsehood, even though I find it in the Declaration of Independence, which has been set up, on the Missouri and other questions, as paramount to the constitution. I say pernicious falsehood—it must be, if true, self-evident: for it is incapable of demonstration; and there are thousands and tens of thousands of them that mislead the great vulgar as well as the small. There are some in bald Latin, such as *principia non homines*—principles not men—that sounds quite antithetical and quaint, and is quite taking with some folks—but what are principles without men, any more than men without principles? and how can you tell the principles of the man until you are shown the man of the principles? But this and such like conceits are given over and again in toasts and sentiments, until the people at last come to believe that there is something in them besides a clinch of words. What would be said to a proposition just about as true and sensible as this *principia non homines*, announced in these words: “Love, not women”—worth just as much as your principles, not men. There is another, which, taken from a different source, I shall speak of as I trust I shall always feel, with reverence—I mean faith without works, as the means of salvation. All these great positions, that all men are born equally free, and faith without works, are in a certain sense, in which they are hardly ever received by the multitude, true; but in another sense, in which they are almost

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invariably received by nineteen out of twenty, they are false and pernicious. I hope I am understood, sir. The principles, to be sure, are what make the man; but you must see the man, to be a judge of his principles; you must know the man; it is not his making a profession of faith, political or religious—you must know his conduct—thistles do not produce figs; so, sir, it is impossible that weak, wicked, or bad public counsels can proceed from a man of good public principles: So is it as it regards works and faith: there is no question in the minds of nineteen out of twenty Christians, that it is the faith and not the works that they are to be indebted to—and they are in fact so far right; but then they forget that the works constitute the only competent evidence of faith; and that with a bad life there is no true faith; yet Christians go on tearing one another to pieces about these things, and yet may find, if they will but take the trouble to consider, that they have been all along beating the air and disputing about terms, except such as are strict predestinarians and such as believe in works of supererogation—that they can buy a place in heaven, and spare a little to a friend to help him in his purchase. In regard to this principle, that all are born free and equal, if there is an animal on earth to which it does not apply—that is not born free, it is man—he is born in a state of the most abject want, and a state of perfect helplessness and ignorance, which is the foundation of the connubial tie. I have heard it lamented elsewhere, that the complainant was born to infancy; but that is only the common lot of all men, except the first man; and I believe the schoolmen were as well employed in disputing, as Hudibras tells us they were in his day, whether any signs of the Umbilicus were found about Adam, as they have been in disputing this nice distinction, without a difference in practice, of faith without works. I have heard it lamented by the same person that he was born to indigence, but none of us bring any thing more into the world (not even the breath of our nostrils) than we carry out of it—and as to ignorance, Locke says that we bring no innate ideas with us into the world; it is true, but man is born with certain capacities—which assume the impression, that may be given by education and circumstances; but the mathematician and the astronomer, who of all men on earth are the most unsafe in affairs of government and common life—who should say that all the soil in the world is equally rich, the first-rate land in Kentucky and the Highlands of Scotland, because the superficial content of the acre is the same, would be just as right, as he who should maintain the absolute equality of man in virtue of his birth. The rickety and scrofulous little wretch that first sees the light in a work-house, or in a brothel, and who feels the effects of alcohol before the effects of vital air, is not equal in any respect to the ruddy offspring of the honest yeoman; nay, I will go further, and say that a prince, provided he

is no better born than blood royal will make him, is not equal to the healthy son of a peasant.

We know that this constitution is a constitution of compromise, of compact, between States. It is a compact between States, which acknowledges the rights of the master over his negro slave, in terms, to be sure, somewhat squeamish as to words. I may be told that the word is not in the constitution. I care not a farthing whether the word is in the constitution or not; not only the existence of negro slavery, but the slave trade itself, for a limited time, was secured under the panoply of the constitution—and thousands were brought, under that guarantee, into the ports of Charleston and Savannah, and sold as slaves, and their progeny will be slaves *ad indefinitum*, unless the States of Georgia and South Carolina shall, in their sovereign capacities, choose to decree the contrary. Did South Carolina stickle for the trade in slaves, as she had a right to do, and with the aid of Connecticut especially, carry her point until 1808; and were the Southern men so ineffably stupid as to take no security for their slaves already here, or that might be brought in under the "first clause of the 9th section of the 1st article" of the constitution, which was unalterable, even by the mode prescribed by the constitution in other cases, until that time? And even if they had been so unguarded, what would the *casus omnis* prove but that, the constitution being silent, Congress have no power over the subject? If these things are not recognized by the book, let me put a case, and it is a question for the court *below*.\* Nothing too hard for them. Supposing that an African should sue for his liberty—where? in the federal court; why—is he a citizen? No. Is he an alien? No. Is he of a different State from his master? No; nothing of all this; but is it not "a case arising under the constitution?" Will not the Supreme Court clutch it—can they refuse jurisdiction? Is there a man on that bench who for one instant—I am putting a supposititious case—a case being brought in the last resort to that tribunal—is there a judge there or anywhere else, who would, for one instant, listen to counsel, who should rely upon the Declaration of Independence, or any other fanfaronade of abstractions, as paramount law—paramount to the constitution itself? The language I have applied to it is strong, but who can be cold in such a cause?

If, said Mr. R., I make use, in the heat of debate, of any improper expression, I beg pardon of the Senate. I have long thought that I could discern, even in that paper [the Declaration of Independence] rather more of the professor of a university than the language of an old statesman; what I have discerned in other State papers I shall not now say. But I will now, with the liberty of the Senate, relieve

\* The Supreme Court, which sat in a chamber under that of the Senate.

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them from my tedious talk, by reading an authority from this book [taking up a volume of Burke's works] which is pat to my purpose. It is on the subject of any man of sense suffering himself to be led away from the case before him, to travel out of the record of common sense, into the mazes of abstraction.

"I never govern myself—no rational man ever did govern himself by abstractions and universals. I do not put abstract ideas wholly out of any question, because I well know that, under that name, I should dismiss principles; and that, without the guide and light of sound, well-understood principles, all reasoning in politics, as in every thing else, would be only a confused jumble of particular facts and details, without the means of drawing out any sort of theoretical or practical conclusion. The statesman differs from the professor of a university—the latter has only the general view of society, the former (the statesman) has a number of circumstances to combine with those general ideas, and to take into his consideration. Circumstances are infinite, are infinitely combined—are variable and transient; he who does not take them into consideration, is not erroneous, but stark mad—*dat operam ut cum rationes insaniat*—he is metaphysically mad. A statesman, never losing sight of principles, is to be guided by circumstances; and, judging contrary to the exigencies of the moment, he may ruin his country forever." But, said Mr. R., how is it with the professor? In the next edition of his book, or in the refutation of his adversary, all the mischief that he has done may be undone and corrected. But when this same professor becomes a statesman? If you want to know the effect of his metaphysical madness, look to the history of the French Revolution, and the undoing of the country—look to the history of such men as Condorcet and Brissot, and Mirabeau—men of good intentions, of learning, and genius—not that I count Mirabeau among the good men of that Revolution: but Lafayette was one of them. What was the consequence of this not stopping to parley with the imprescriptible rights of man, in the abstract? It is that they have now full leisure to meditate on the imprescriptible rights of their king in the concrete; that is the result of devotedness to abstract politics—of their management—look at it in Hayti and everywhere—I would say, if I was not afraid of being considered as treating this subject too lightly, which lies heavy on my heart—look at the famous academy of Lagado, and you will have a pretty fair specimen of a country governed by mathematicians and star-gazers, from light-houses in the sky. It is mournful while it is ludicrous. I have seen men who could not write a book, or even make a speech—men who could not even spell this famous word Congress—(they spelled it with a K)—who had more practical sense and were more trustworthy, as statesmen, or generals, than any mathematician, any naturalist, or any literati, under the sun.

Sir, as a natural death is preferable to a death superinduced by the lavish use of chemical and mineral poisons—so, in my humble judgment, at least, a natural fool is preferable to a fool *secundum artem*—he is the least dangerous animal of the two—at least, not having been deeply cultivated, like other shallow soils, what little mother-wit is in him is not turned up by some new patent plough, and buried beneath the sand, never to give birth to vegetation more; whereas, the over-educated fool never dreams that, with all his learning and acquirements, he is but a greater fool than ever. We, of the cotton country, sir, know that deep cultivation is fatal to shallow soils. Some of these wise men have discovered that a whale is not a fish, but we have not, therefore, altered the phraseology of the laws relating to the whale fishery, because one of our cognocenti has found out that a whale is no fish at all, and has not, as far as I know, told us what to call it; and the hardy seamen of Marblehead and Cape Ann, who have stood by us, and by whom I will stand, no wiser than the Congress, for all their schooling, will persist in talking of their good or bad fishing, and of their having taken so many *fish*.

Sir, we have a military school, and we are to have a naval school—I should not like to see the experiment tried—but, sir, it would be a good subject for a bet, (not that a bet is a proper subject to be named here,) but it would be a good thing—I would take some rough Massachusetts or Nantucket, or Maine and Sagadahock, or a New Hampshire seaman—such a man as Isaac Hull, and pit him against any man coming from a naval academy. If we had an army of cadets, if they came across such a man as Jackson, or Morgan, or such self-taught men, their diagrams at West Point would stand them in little stead in time of action. We must at last come down from our stilts—we must agree to be what the fathers of the constitution, the *pater patriæ*, made us to be, the good old United States, courting the arts of peace, minding our own business, and not interfering with that of others, or with alliances, holy or unholy, Greek or barbarian; above all, not departing, under the idea of a foreign mission, of sending to England or France, or to the Congress of Verona, ministers to change our whole policy, and perhaps our very form of government—departing, fundamentally, from the principles of the constitution. The manner in which any change is to be made in our articles of union and confederation, is already provided for in the constitution itself—in article fifth. The constitution has provided that, whenever these confederated States shall see cause to use them—means by which this instrument shall be changed, always saving, until 1808, the clause securing the slave trade and capitation tax from any alteration until that time. If we choose to go into common alliance with the South American States, or with the State of Hayti, or the States of



Barbary—(Algiers, too, is a Republic)—we have a right to do it—the States, and the people of the States, are not in pupillage—they are *sui juris*—they have a right to become parties to the Holy Alliance to-morrow; but how? agreeably to the provisions of this little book, if they please—but they do not please; and, above all, they will not please—they will not please to have that change made, not according to the rules established by themselves, but by the *sic volo*, the *sic jubeo*, the *stat pro ratione voluntas*, of any man, however high in office, by the instrumentality, and under the color of fitting out a foreign mission for any Congress or Confederacy on the face of the earth. There is a regular constitutional mode in which these things are properly to be done; there is a regular constitutional mode by which, if you please, every negro in the United States may be set free; because the Southern States have, each for herself, the right if they please; but they don't please; and they as little please to do it by a law of their own making, as to have it done by measures that tend to a fundamental change in the original compact between them as States; by going into joint stock companies with any other States whatever, except such as we may choose to create out of our own territory—out of that which was part of the good old United States, or out of the territory which the United States have acquired by treaty with foreign powers.

Sir, said Mr. R., if, in the course of the very tedious and desultory remarks—more tedious even to me than they appear to have been to the Senate—which I have submitted, I may have let drop any unwary or unfounded expression in reference to any individual, particularly any trans-Atlantic individual, I hope to be permitted to take the full benefit of all the qualifications which a man of honor never fails voluntarily to give to any rash or harsh expression, dropped in heat of blood, however founded in fact, and which he is particularly anxious always to give to men who are emphatically men of peace. I must be permitted to say, that there exists, in the nature of man, *ab ovo*, *ab origine*, of degraded and fallen man—for the first-born was a murderer—a disposition to escape from our own proper duties, to undertake the duties of somebody, or anybody else. There exists a disposition, not to do as our good old Catechism teaches us to do—to fulfil our duty in that station to which it has pleased God to call us. No, sir; it is obsolete and worm-eaten—we must insist upon going to take upon ourselves the situation and office of some one else, to which it has not pleased God to call us—of the Hindoos and the Otahaitan; of anybody or any thing but our own proper business and families; and these very amiable—for such they are—these very pious men—for such I believe them to be—I don't mean all of that connection—but I mean the men whom I particularly have named or indicated—are led away by this self-delusion, aided by the influ-

ence of the moral atmosphere of London, which no man can breathe with impunity—men of abstraction and visionary character more especially. Let me be understood—the physical atmosphere of London is of such a nature—the physical excitement is so great—the wonders, the stir, the bustle, the objects continually changing before the eyes—the pulse of life is so habitually stimulated—that the best-bred physicians have agreed that the diseases which imperiously require depletion in the country, will not bear that practice in town—that it cannot be safely followed in London. You might as well attempt to deplete a habitual sot, whose pulse, once got down, not even brandy will get up again; a man accustomed to the preternatural stimulus—I have stated, as to deplete a Londoner, who is accustomed to the stimulus of the excitement of the atmosphere. But there is a moral atmosphere too in London—there is not a place on the face of the earth, where there is so much public spirit—so much active benevolence—where there is so much munificence, and so much is given away in charity. I speak not of the gross amount, but in proportion to her wealth, overgrown and enormous as it is. I believe, with the author of this book [Burke], that the spires of her charities avert from her the lightning of Heaven, which her depravity would otherwise call down. There is a moral atmosphere—there is hardly a man of note, who does not belong to some society—like our Colonization Society, and like that, it is a theatre for display, like other theatres. They go there to praise one another to their faces, in a manner that I had no conception of *then*. But the example has not been lost upon us. They are all of one opinion; a set of resolutions are drawn up which nobody is expected to oppose. It would be unheard-of to do so, and reckoned indecent to do so. All is out and dried—like what is called here a *caveau*, why, I could never tell.

No one thinks it worth while to oppose them, for it would be labor lost—speeches are made, cheerings follow, and clapping and thundering applause—such as is seen in our theatres, and might well shake the nerves of such as are not used to it—such overweening praises are given. And these men are in the habit of imbibing so much and such refined as well as gross adulation, that they cannot live out of the atmosphere of London. The fine ladies, of course, have the vapors upon the abstraction of this stimulus—this moral stimulus of the atmosphere of London is necessary to their existence. I can only suppose them—these good men—subject to the infirmities of our nature, and falling under the temptation to which they are peculiarly exposed. The theatre of their glory was the slave trade—now it is the abolition of slavery everywhere; at every risk of consequences, to which they are stone-blind. If they would only be content to let the man alone—if they would not insist upon plastering

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Negro Slavery in South America.

[SENATE.]

him an inch thick with mercurial ointment, and I know not what active poisons without, and filling him to the throat with calomel and jalap, within, he will, may be, get well; or at best, he can but die a natural death—probably an easy one. But, no, sir, the politico-religious quack, like the quack in medicine, and in every thing else, will hear of nothing but his nostrum—all is to be forced—nothing can be trusted to time, or to nature. The disease will run its course—it has run its course in the Northern States; it is beginning to run its course in Maryland. The natural death of slavery is the unprofitableness of its most expensive labor—it is also beginning in the meadow and grain country of Virginia—among those people there—who have no staple that can pay for slave labor—especially amongst those who have none or very few slaves—these are the strenuous advocates of all these principles—in Virginia—most of them of the best intentions—all of them mistaken. The moment the labor of the slave ceases to be profitable to the master, or very soon after it has reached that stage—if the slave will not run away from the master, the master *will* run away from the slave; and this is the history of the passage from slavery to freedom of the villanage of England. The freeborn Englishmen were once *adscripti glebae*, like the serfs in Poland. Are not those of Russia and Poland going through this very operation at this very time, and from this very cause? And shall we be made to suffer shipwreck, we of the South, I mean, in steering our bark through this *Eurypus*, by the madness of our pilot and our own folly—steering between this Scylla and Charybdis, (not of the Bahama passage,) but of the imprescriptible rights of Kings (*jure divino*) on the one hand, and the imprescriptible rights of negro slaves on the other? Is there no medium? No *medie tutissimus ibis*? No parental injunction,

“Parce, Puer stimulis et fortiter utere loris?”

No—nothing of this. Thus fools rush in where angels fear to tread—whether ill-meaning or well-meaning fools is of no importance to me, if my ruin is to be accomplished by their interference. What matters it whether the fire-brands scattered were scattered by a fool, in sport, or by a madman, in earnest, if the city is reduced to ashes; or whether the fire-brands were scattered by the hand of a Guy Fawkes, with religion in his mouth, a firebrand in his hand, and hell in his heart? Nothing at all. It is important to the agent, as it regards his guilt in the sight of God, but both of them would be apt to meet their doom from the hand of man.

I have said, sir, a great deal that I did not mean to say, and have left unsaid a great deal that I did intend to say—and have said nothing as I wished to say it: this is one of the inseparable and insuperable difficulties of a man who speaks without a note, as I have done,

aggravated by circumstances that I shall not intrude upon the Senate. Sir, I never could speak or quarrel by the book—by the card, as Touchstone tells us, was the fashion in his day. I have no gift at this special pleading—at the retort courteous and the countercheck quarrelsome, till things get to the point, where nothing is left for it but to back out or fight. We are asked, sir, by this new Executive Government of ours—not in the very words, but it is a great deal like it—of the son of Climene—to give some token, some proof, that they possess legitimate claims to the confidence of the people—which they have modestly confessed they do not possess in the same degree as their predecessors. I will answer them in the words of the father of that son. *Pignora certa petis—Do pignora certa timendo.* But, sir, the Phæton is at the door, ambition burns to mount. Whether the Mississippi, like the Po, is to suffer a metamorphosis, not in its poplars—whether the blacks shall be turned into whites, or the whites into blacks, the slaves into masters, or the masters into slaves, or the murdered and their murderers to change their color, like the mulberry trees, belongs to men of greater sagacity than I am to foretell. I am content to act the part of Cassandra, to lift up my voice, whether it be heeded, or heard only to be disregarded, until too late—I will cry out, *obsta principis*—yes, sir, in this case, as in so many others—*c'est ne que le premier pas qui coûte*—the first step is all the difficulty—that taken, then they may take for their motto—*vestigia nulla retrorum*—there is no retreat—I tell these gentlemen there is no retreat—it is cut off—there is no retreat, even as tedious and painful as that conducted by Xenophon—there is no Anabasis for us—and if there was, where is our Xenophon? I do not feel lightly on this occasion—far otherwise—but the heaviest heart often vents itself in light expressions. There is a mirth of sadness, as well as tears of joy. If I could talk lightly on this sad subject, I would remind gentlemen of the reply given by a wisacre, who was sent to search the vaults of the Parliament House at the time of the gunpowder plot, and who had searched and reported that he had found fifty barrels of powder concealed under the fagots and other fuel—that he had removed twenty-five, and hoped that the other twenty-five would do no harm. The step you are about to take is the match of that powder—whether it be twenty-five or fifty barrels is quite immaterial—it is enough to blow—not the first of the Stuarts—but the last of *another dynasty*—sky high—sky high.

Mr. HAYNE again rose, in reply to Mr. RANDOLPH, and said, there certainly could be no difference of opinion between that gentleman and himself, on any question which should involve the peculiar interests of the Southern States. Should any crisis unhappily arise, in which the policy of that portion of the Union should be called in question, or their safety endangered, that gentleman well knows, not only

that we, said Mr. H., will be found acting cordially and zealously together, but that the whole South will be *as one man*. On this subject, however, Mr. H. said, he was at all times most reluctant to touch, and he certainly would not enter upon it on the present occasion. Nor would he at this time say a word in respect to another question to which the gentleman from Virginia had alluded, the relations which ought to exist between the new Republics and ourselves. The question now before the Senate was, whether we should postpone, for a few days, a resolution calling on the Executive for information relative to the principles and practice of these Republics. The simple and only object of the postponement was to ascertain whether the application would probably add any thing to the information we already possess on this subject. If, on further reflection and inquiry, the gentleman from Virginia, or any other gentleman, should have good reason to believe that the Executive was in the possession of more information than the Senate possessed in this particular, he would not object to any call calculated to elicit that information. But in that case he would suggest the propriety of such a modification of the resolution as would point more specifically to its objects. The gentleman from Virginia had, in acknowledging the friendly relations which existed between them, asked to be "saved from his friends." He would say to that gentleman, that while he was proud of the relation in which he stood towards him, he trusted that on this, as on all future occasions, he would prove himself a friend by the part he should act towards that gentleman.

Mr. H. concluded by moving that the resolution be laid upon the table, which (Mr. RANDOLPH assenting) was ordered accordingly.

MONDAY, March 6.

*General Appropriation Bill—Contingent Expenses of the Senate—Commissioners for Marking the Boundary under the Ghent Treaty.*

On motion of Mr. SMITH, the Senate proceeded to consider the bill "making appropriations for the support of Government, for the year 1826."

The following amendments, proposed by the Committee of Finance, were agreed to, viz: seven thousand dollars for the contingent expenses of the Senate, in addition to the sum heretofore appropriated; six thousand dollars instead of twelve, for the discharge of miscellaneous claims against the United States, not otherwise provided for; and for compensation to Thomas H. Gillis, Chief Clerk in the Office of the Fourth Auditor, (for extra services, rendered between the demise of the late Auditor, and the appointment of his successor,) \$950; and one or two slight amendments were added, on the motion of Mr. SMITH.

Mr. COBB, of Georgia, said there was an appropriation made in this bill which he should

wish to strike out; it was for the salaries of the Commissioner and Arbitrators under the first article of the Treaty of Ghent. He should be very glad if the Chairman of the Committee on Finance was able to give some information how it was that the business of this commission was so much delayed; what is the commission doing, or how is it proceeding to act, on the business for which it was instituted; or is it at a stand? What is the cause of this? At least, said Mr. C., let us have something official on the subject. He began to be a little tired of seeing that and the next appropriation in the bill, (for carrying the 6th and 7th articles, respecting the boundary of the treaty, into effect,) year after year. Considering how long it was since this treaty was made, Mr. C. said it was a wonderful circumstance to him, that, year after year, appropriations on the subject should still have to be made. He hoped that, if the commission first alluded to could not proceed in the business, that their salary, at least, would be suspended until they could. He understood that the commission was totally at a stand. It was, he thought, high time for the Senate to have some information on the subject, and if they could not withhold the money, let them know the reason why; and whether there was any prospect of bringing the labors of this commission to an end.

Mr. HOLMES, of Maine, said the Committee of Finance did not deem it their duty to go into an inquiry, whether any of the officers provided for by law had done their duty or not; they had not inquired how far those gentlemen had proceeded; or whether they had proceeded at all. The committee had ascertained that they were the commission—that they were duly appointed—that their compensation was agreed on, and was established either by treaty or by law: till that commission was ended, it was a question with the Executive whether they were proceeding correctly or not. It was not a question with the Committee of Finance, whether they should withhold the salary from any officer for not having performed his duty.

Mr. COBB, of Georgia, said from the character of the gentleman referred to, he believed there was no man who was more disposed to do his duty promptly. Yet, it seemed to him that some information ought to be laid before Congress on this subject, as to the progress made by the commission in the discharge of its trust, before they continued to make appropriations for it. What was the progress made? If their operations had been suspended, they ought, he said, to know why it was so; what were the difficulties thrown in the way; and, till they obtained information on this subject, Mr. C. was not disposed to vote a salary, year after year, for literally doing nothing. He said, if he knew how to get hold of this part of the bill, he should be willing to suspend the item, till he could get some information of the nature he had intimated. He believed a call had been

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made in the other branch of Congress, and when this was answered, they could then judge with more propriety whether it would be proper to continue the appropriation. There must, he thought, be some way by which Congress could get hold of this subject. He did not conceive they were bound down by any condition or bond to make appropriations, year after year, forever, for aught he knew, to maintain this commission; and he knew of no other way by which Congress could get hold of the subject than through the appropriation bill; and he repeated, if he knew how to get hold of this specific part of the bill, without suspending the whole in its passage, he would make the motion.

Mr. SMITH, of Maryland, said, it never had been the duty of any committee to examine further, on a subject of this kind, than to ascertain whether the law authorized the appropriation. Unless they received information from the President to the contrary, they supposed that the officers were doing their duty. It would be very injudicious to stop the appropriation bill at this time; injudicious, perhaps, in relation to the quarter of the country from which the gentleman from Georgia came. When this subject was under discussion in Russia, Mr. S. said, the British Minister proposed the proper course, which was not acceded to on the part of our Minister. The British Minister said, you will appoint a commission, and you do not know when it will be determined, and it will probably cost you more than the thing itself is worth; we will give you a specific sum of money, which you may divide among the claimants as you please, yourselves. That, Mr. S. said, would have been the better course, but it was not adopted. We have adopted another, and have employed our agents, and pay them the salary established by law. The committee did not inquire into their conduct.

Mr. COBB then inquired of the Chairman of the Committee of Finance, for information in regard to the next article, for carrying into effect the sixth and seventh articles of the Treaty of Ghent, (for ascertaining the northern boundary.) He recollected that, four years ago, there was some difficulty on this subject, and it was then thought that the Commissioner, and the other persons employed in that business, were slow about it; and he should like to know if there was any prospect of its ever terminating.

Mr. HOLMES replied, that this was not the course usually adopted for going into an inquiry. The course to be adopted was, to lay a resolution on the table, calling on the President for evidence on the subject, and what progress the business was in. There was so much feeling on this subject five years ago, Mr. H. said, that a bill was brought into the Senate, and passed both Houses of Congress, diminishing the compensation of the Commissioner: it was apprehended that the delay might, in some sort, be occasioned by the magnitude of the salary. Experience proved, he said, that business does not

go along quite so quick with a heavy salary, as it does with a light one. That bill experienced great opposition. It was said the salary was fixed by treaty, and we had no right to lower it. It was, however, reduced from a thousand pounds sterling, to twenty-five hundred dollars a year; and it seemed, Mr. H. said, that that was not low enough to hurry the Commissioners, so as to finish their business. It was probable that the gentleman from Georgia, and the rest of the Senate, know as much as the Committee of Finance on the subject. A communication had formerly been received from the President on the subject, in which he told them that they were making progress, and would probably finish soon; but when that *soon* was, Mr. H. said he did not know. This business was begun in 1816, and it is now 1826, and we have been paying the Commissioner, &c., all this time. They had a long journey to perform, to be sure, but they had not finished it. These commissions under treaty, Mr. H. said, had not been very successful. Out of the four under the Treaty of Ghent, only one was finished, in which he himself was concerned, and if he were engaged in such a one again, he doubted whether he should finish quite so quick; and whether he should not have learned from some other, the way to procrastinate. That commission was completed in eighteen months. The second, under the fifth article, still continues, and there it stands. Whether this one will end so or not, he could not say. We never ought again, Mr. H. said, to establish a commission under treaty, without limiting the time; and he doubted very much whether the Florida treaty commission would ever have been ended, to this day, had not the Commissioners been tied to three years.

The bill was then reported to the Senate, and the amendments made in Committee of the Whole having been concurred in, it was passed to a third reading.

MONDAY, March 13.

*Suspension of the Habeas Corpus.*

Mr. RANDOLPH, of Virginia, rose to make a motion, which, said he, I hope and believe no one member of this body will dissent from. It is, sir, for printing a most important document of old times, which is not on our files, and which, if not found on the files of the other House, is not in existence, officially, anywhere. The document I allude to is one, the history of which I gave the other day, in conclave—and which I certainly do not mean now to trouble the Senate with the repetition of—I believe the day, the 9th perhaps of last month, when I anticipated what has come to pass in Russia. Sir, I then said that I spoke from memory, but I have since done what I am not in the habit of doing—I *have* hunted the Journal; I have applied to the Secretary for a copy of the document, and he has it not. I at first thought it might have been burnt by the British: for they

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served us as the Irish insurgents did a banker, against whom they had a special spite, when they burnt all his notes in order to break him—in like manner they did some of us a very great service. Whenever any thing is wanted, we now can have the answer of old Caleb Balderstone, referring its absence to the fire at Wolf's Crag. I find, in the Journal of the Senate to which I have had recourse, this entry:

"Friday, January 23, 1807.

"On motion, by Mr. GILES,  
"Ordered, That Messrs. GILES, ADAMS, and SMITH, of Maryland, be a committee to inquire whether it is expedient, in the present state of public affairs, to suspend the privilege of the writ of habeas corpus, and that they have leave to report by bill or otherwise.

"On motion,

"Ordered, That the Message of the President of the United States, of the 22d instant, together with the documents therein mentioned, be referred to the same committee.

"Whereupon,

"Mr. GILES, from the committee, reported a bill to suspend the privilege of the writ of habeas corpus for a limited time, in certain cases; and the rule was, by unanimous consent, dispensed with, and the bill had three readings, and was amended.

"Resolved, That this bill pass as amended; that it be engrossed, and that the title thereof be, 'An act to suspend the privilege of the writ of habeas corpus for a limited time, in certain cases.'

[In certain cases, said Mr. R.—not the cases which the constitution has declared shall be the cases in which it shall be suspended—I said certain cases—I should have spoken more properly to say in *uncertain cases*—for the *certain cases* are the cases of the constitution.]

"The committee also reported the following message to the House of Representatives; which was read and agreed to, to wit:

"Gentlemen of the House of Representatives:

"The Senate have passed a bill suspending, for three months, the privilege of the writ of habeas corpus, in certain cases, which they think expedient to communicate to you in confidence, and to request your concurrence therein as speedily as the emergency of the case shall, in your judgment, require.

"On motion,

"Ordered, That Mr. SMITH, of Maryland, be the committee to deliver the message to the House of Representatives."

"Monday, January 26, 1807.

"Mr. ADAMS, from the committee, reported that the bill entitled, 'An act to suspend the privilege of the writ of habeas corpus, for a limited time, in certain cases,' was correctly engrossed.

"Mr. SMITH, of Maryland, reported that he had carried the bill last mentioned, to the House of Representatives for concurrence."

And now, sir, let us turn to the House of Representatives—because the bill was never printed; there is not an office copy of it to be found here; it was carried to the House of Representatives—and if not found there, there is no office copy of it in the world; though

there are copies equally entitled to credit with any office copy whatever.

"House of Representatives, Monday, January 26, 1807.

"A message was received from the Senate, by Mr. SAMUEL SMITH, as follows:

"Mr. Speaker: I am directed by the Senate of the United States to deliver to this House a confidential message in writing. Whereupon,

"The House being cleared of all persons except the members and Clerk, Mr. SMITH delivered to the Speaker the following communication, in writing:

"Gentlemen of the House of Representatives:

"The Senate have passed a bill suspending, for three months, the privilege of the writ of habeas corpus, in certain cases, which they think expedient to communicate to you in confidence, and to request your concurrence therein, as speedily as the emergency of the case shall, in your judgment, require.

"Mr. SMITH also delivered in the bill referred to in the said communication, and then withdrew.

"The bill sent from the Senate, entitled, 'An act suspending, for three months, the privilege of the writ of habeas corpus, in certain cases,' was read the first time.

"A motion was made by Mr. PHILIP R. THOMPSON, [an old coadjutor of mine, said Mr. R., and I have no hesitation in saying, at my instance,] and seconded, that the House do come to the following resolution:

"Resolved, That the message and bill communicated to this House, from the Senate of the United States, and the proceedings of the House thereon, ought not to be kept secret, and that the doors of the House be now opened.

"And on the question thereupon,

"It was resolved in the affirmative—yeas 123, nays 3.

The nays were Josiah Masters, David Thomas, and Nathan Williams, (two of them I know, and all three of them, I believe, from New York.)

"The doors of the House were accordingly opened, and the Speaker stated to the House, that the bill sent from the Senate having been read the first time, the question would be, Shall the bill be read the second time? Whereupon,

"Opposition being made by a gentleman from Virginia, to the said bill, and debate arising thereon, the question (in conformity to the rules of the House) was stated by Mr. Speaker, to wit:

"Shall this bill be rejected?

"And on the question to reject,

"It was resolved in the affirmative—yeas 113, nays 19."

What is the most remarkable thing, said Mr. R., is, that of these nineteen nays, there is not one man from the Old Dominion—not one man. There were but four south of the River Ohio and south of the River Potomac—let me count them—Evan Alexander, of North Carolina, Elias Earle, of South Carolina, Thomas Sandford, of Kentucky, and Matthew Walton, of Georgia—I beg pardon, of Kentucky—the Yazoo led me into the error; I find, also, amongst the nays, on this occasion, the name of a certain Mr. Barnabas Bidwell, who commenced

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the lead in that House, in that very session! I find, too, the names of Josiah Masters, Gordon S. Mumford, Henry Southard. And then, sir, in turning back to the Senate journal, there is not one trace, neither yea nor nay. The only entry to be found on the Senate journal afterwards, was the following:

"The following message was received from the House of Representatives by Mr. Beckley their Clerk: Mr. President—the House of Representatives do not concur in the bill entitled, 'An act to suspend, for three months, the privilege of the writ of habeas corpus, in certain cases;' and he withdrew."

But as the rule was unanimously dispensed with, and the bill had three readings in one day, unanimously, it is to be inferred from that fact—for reasons which I gave to the Senate when the doors were shut, and which I don't choose to give now that they are open—there was no opposition here. Now, sir, not being able to find any trace of this bill here, it never having been printed—it never having been on file—the question is, where is to be found? In the other House, if anywhere—if anywhere I say again—if anywhere!

That suspension of the writ of habeas corpus was the first oblation which the present Executive Magistrate made at the shrine of power, when he gave in his adhesion on the desertion of his federal friends! Up to that session, he had been as staunch an adherent of the federal opposition to Jefferson's administration as any man in this country! We know by a voice—not from St. Helena, but from the south side of James' River—who was the sponsor who introduced him into the political church, who promised and vowed certain things in his name, which he has not yet disclosed; we hear that voice proclaiming from the Wigwam, and loudly calling upon him to come forward—now that he is an adult, 16 years having passed since his baptism at the new political font—and receive confirmation, and exonerate his Godfather—he who stood for him at the baptismal font—from all further responsibility on his account for his political sins. He calls on him to come forward, to get another endorser, for that he must take his name off his paper—that is a phrase which nowadays is much better understood!

Under these circumstances, said Mr. R., it has been to me a matter of wonder, that, during the late electioneering campaign—I have expressed myself to that effect to my good friend on my left, (Mr. MAON)—as I had but a shadow of preference amongst the contending parties, I did not mix myself with one side or the other in the election—I often expressed my wonder to him, for two years that preceded, that this fact had never been brought forward and used, as please God I would have used it, if I had had any interest in doing so; and I now discover the cause; it was not known—and permit me to say, it would never have been known to me by any industry of research or labor, if I had not been—whether fortunately or unfortunately—contemporary

with this Government, first as a spectator in the lobby, from its origin—from the dissolution of the old Congress, which I saw expire, and a new butterfly come out of the chrysalis state—up to 1799, when I first took my seat in the Congress of the United States, with the gentleman who presides in the court *below*—(I do not speak as to jurisdiction—(the term is technical)—but in reference to the place where it holds its sittings,) with so much honor to himself and benefit to this country; from whom, though I may have differed in the course of a long political life, I have never withheld that respect, not even in conflict on the floor of the other branch of the Legislature, where he sat, during one session, in times when party spirit was at its height—I never, for a moment, lost sight of the immeasurable distance that separated me from that man, in every respect that could be mentioned, except age—and he was nearly old enough to be my father—for, where I meet with real worth—where I meet with a man of real talent—whether associated with him or not—whether placed in a situation where I was to appear only as a foil to his superior merits and ability, [pointing to the seat of Mr. TAKEWELL,] I can yield him that precedence which I shall never give to the assumption of superior merit, where I know and feel that it does not exist.

Sir, I consider that of all the stretches of power—*talk about internal improvements!*—of the *expediency* of suspending the privilege of the habeas corpus, in certain cases, in the teeth of the constitution! What says the constitution? That the privilege of the writ of habeas corpus shall not be suspended, except in two cases. What are they, sir; what are they? You would not have had that privilege, even if there had been no restriction, in your power; because you have nowhere had the grant of power to suspend the grant of power—the restriction is *ex abundanti cautela*—out of abundant caution, overweening care—like the restriction on the liberty of the press, in the teeth of which the sedition law was passed—like the restriction on an established church, in the teeth of which, for aught I know, an established church for the Catholics may be passed by this Congress, or by that of Panama.

These are in the amendments—take notice, there is no grant in the body of the constitution. Article 1, section 9. "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it."

Well, sir, here was a bill to suspend it—not in a case of rebellion or invasion; because all that was necessary would have been for the President to have sent a message, that there was rebellion or invasion, and to call for the suspension. There was no message from the President to that effect. I have no hesitation in saying that it was well understood that the channel through which the communication was made—not at all—I make no such allegation against Mr. Jefferson—but alleged to have been

made by him—was the channel of that gentleman who reported the bill to have been duly engrossed—the middle member of this committee—I speak without irreverence—I have my principles on that point—the second person of this trinity in unity. It was well understood at that time—I never doubted it—I had my information from a member of this body, at that time, who was as honest a man as ever breathed—there is no message on the Journal recommending it—there is no official document—the bill is not now to be found—but it did pass this House—to suspend the habeas corpus, *in certain cases*.

Will the Senate pardon me for saying, that, to that suspension, was I indebted for my seat in the other House. At the preceding session of Congress, it was my misfortune not to see exactly with the eyes of people in power. I wanted some of that very laudable modesty which Chatham said that he admired whilst he despaired of imitating it—the modesty of the retainers of the Treasury bench—whose humility never allowed them to put their opinions in opposition to that of the minister for the time being. The next election came on in the April following this January, 1807. That bill—it was the panoply under which I sheltered myself—the text from which I preached; and, as on the issue of the first battle greatly depends the fate of the succeeding campaigns—no opposition dared to show itself; from that day, Sertorius like, or like Eumenes, I carried on the war upon my own resources, or as the King of Prussia carried on the war against the combined continent of Europe—for seven long years—relying on my own resources, and on them alone, against the General Government, the State Governments, and, I believe, every press in the United States, and maintained myself—not in the Peninsula, but in that district, where, in case of the worst that can happen, I look for refuge under any change of fortune, political or otherwise. My enemies never dared to face me and uphold this outrage upon the constitution; and do you think if I had been engaged heart and hand in this late election, I would have let this thing sleep? No, it should have rung like a funeral knell in the ears of the incumbent and the expectant. Let that pass—I did not disturb its sleep—I did not meddle with it; it was not for me to wake the adder—the rattlesnake—the good old rattlesnake—the emblem of liberty. “Don’t tread on me!” I did not care one button which of the contending parties he bit—not one farthing.

Sir, I must take leave to express myself here, as everywhere else, in my plain fireside, plantation way. The little advancement—and I cannot say that I feel it very highly, sir—from a majority to a colonelcy, has never altered my manners, and never shall, either in this Legislature or out of it; and I shall continue to be the same man, I trust, both at home and abroad, that I was before. I would, therefore, respectfully move, that a message be sent to the

House of Representatives, requesting of that House an office copy of the bill sent to them by this House on Monday the 26th day of January, 1807, suspending for three months the privilege of the writ of habeas corpus in certain cases. If it does not come from that House—and I am rather afraid it will not—I do not believe it has been burnt either—for I have some very obscure recollection in my mind of its disappearing off the file of that House long before the war was declared, or there was any fire in the Capitol—I don’t mean the library fire, but Roes’s fire—John Bull, on that occasion, made himself an Irish bull: he tried to break his enemy the banker by burning all his notes that he could lay his hands on. I make you that motion, sir.

The PRESIDENT being about to put the question on agreeing to the motion—

Mr. BELL, of New Hampshire, rose, merely to suggest that this motion was somewhat of an extraordinary nature, and he should be glad to take a little time to consider it. He did not see the motive which had induced the gentleman to make the motion, and at present he must acknowledge he should be very unwilling to send a proposition of this sort to the House of Representatives.

Mr. SMITH, of Maryland, asked whether it was not required by the Rules of the Senate, for a resolution of this kind to lie one day.

The CHAIR declared such was the rule, unless its immediate consideration was asked for by the mover; and Mr. RANDOLPH not pressing its immediate consideration, it was laid on the table until to-morrow.

#### TUESDAY, March 14.

The Journal of yesterday having been read—

Mr. RANDOLPH rose, and addressed the Senate nearly four hours, on the subject of the resolution which he submitted yesterday, and on various topics connected with that and other political incidents in the history of the country, particularly on the report made (by Mr. JOHN QUINCY ADAMS) from the Select Committee of the Senate, in 1807, in the case of John Smith, a Senator from Ohio, charged with being an associate in Burr’s conspiracy—which report Mr. R. concluded by moving to have printed for the use of the Senate, (and withdrawing the motion that he made yesterday, in regard to the bill suspending the privilege of the writ of habeas corpus, that bill having been since found.)

The motion to print the report was negatived, without a count, and then, about 4 o’clock, The Senate, on motion of Mr. SKYMOUR, went into the consideration of Executive business.

[This day the final question on the celebrated Panama Mission was decided: and here is the place to insert the record of confidential proceedings thereon, ordered by the Senate, by a vote on this day, to be made public. Those proceedings are as follows, viz:]

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Secret Executive Proceedings.

[SENATE.]

WEDNESDAY, February 15.

*Secret Executive Proceedings.*

Mr. VAN BUREN, of New York, submitted the following resolutions:

*Resolved*, That upon the question whether the United States shall be represented in the Congress of Panama, the Senate ought to act with open doors; unless it shall appear that the publication of documents, necessary to be referred to in debate, will be prejudicial to existing negotiations.

*Resolved*, That the President be respectfully requested to inform the Senate whether such objection exists to the publication of the documents communicated by the Executive, or any portion of them; and, if so, to specify the parts, the publication of which would, for that reason, be objectionable.

On the question to agree thereto—

It was determined in the affirmative—yeas 23, nays 20.

WEDNESDAY, February 22.

The Senate resumed the consideration of the motion submitted by Mr. ROWAN on the 20th instant; and the same having been modified at the instance of Mr. WOODBURY, as follows:

*Resolved*, That it is the unquestionable right of the Senate to call, in respectful terms, upon the President of the United States, for such information as may be in his possession, and which the Senate deem necessary to the faithful discharge of the duties imposed upon it by the constitution; and, more especially, the duties resulting from matters which the constitution makes it the duty of the President to submit to the Senate, for its advice and consent.

*Resolved*, That the two following resolutions, of the 15th instant, viz: "*Resolved*, That, upon the question whether the United States shall be represented in the Congress of Panama, the Senate ought to act with open doors; unless it shall appear that the publication of documents, necessary to be referred to in debate, will be prejudicial to existing negotiations. *Resolved*, That the President be respectfully requested to inform the Senate, whether such objections exist to the publication of the documents communicated by the Executive, or any portion of them; and, if so, to specify the parts, the publication of which would, for that reason, be objectionable:"—requested information in the possession of the Executive, and in his possession only, which the Senate deemed important to guide its decision on a subject within the scope of its advising powers, and deeply interesting to the States and to the people of this Union.

*Resolved*, That the message of the President, in the following words, viz: "In answer to the two resolutions of the Senate of the 15th instant, marked (Executive,) and which I have received, I state, respectfully, that all the communications from me to the Senate, relating to the Congress at Panama, have been made, like all other communications upon Executive business, in *confidence*, and most of them in compliance with a resolution of the Senate requesting them confidentially. Believing that the established usage of free confidential communications, between the Executive and the Senate, ought,

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for the public interest, to be preserved unimpaired, I deem it my indispensable duty to leave to the Senate itself the decision of a question, involving a departure, hitherto, so far as I am informed, without example, from that usage, and upon the motives for which, not being informed of them, I do not feel myself competent to decide"—does not give to the Senate the information requested, "whether the publication of the documents," or "any portion of them," communicated by the Executive, as to the mission to Panama, "would be prejudicial to existing negotiations."

*Resolved*, That the Senate has the sole right in all cases to determine what shall be the "rules of its proceedings;" and that the President cannot interfere with the same, without violating the constitutional privileges of the Senate.

*Resolved*, That the Senate has the sole right to determine, what are its existing "rules of proceedings," whether founded on "usage" or positive written regulations—and that the President cannot officially decide what those rules are, or whether any proposed mode of acting, is a "departure" from them "without example," or whether it be essential to the "public interest," that some supposed "usage" of the Senate should "be preserved unimpaired."

*Resolved*, That it is not competent for the President, on a call from the Senate, to decline giving information, whether "the publication of documents necessary to be referred to in debate, will be prejudicial to existing negotiations," on the ground that he disapproves of the mode of proceeding which the Senate proposes to follow on the subject to which those documents relate.

On motion of Mr. BARTON, of Missouri, to postpone the same indefinitely, a division of the question was called for.

On the question to postpone indefinitely, the *first* resolution—

It was decided in the affirmative—yeas 24, nays 20.

On motion by Mr. COBB, of Georgia,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

YEAS.—Messrs. Barton, Bell, Boulogny, Chambers, Chase, Clayton, Edwards, Harrison, Hendricks, Holmes, Johnston of Louisiana, Knight, Lloyd, Marks, Mills, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, and Willey—24.

Those who voted in the negative, are,

NAYS.—Messrs. Benton, Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Ellis, Findlay, Hayne, Johnson of Kentucky, Kane, King, Macon, Randolph, Rowan, Van Buren, White, Williams, and Woodbury—20.

On the question to postpone, indefinitely, the *second* resolution,

It was determined in the affirmative—yeas 24, nays 20.

On the question to postpone, indefinitely, the *third* resolution,

It was determined in the affirmative—yeas 24, nays 20.

On the question to postpone, indefinitely, the *fourth* resolution,



It was determined in the affirmative—yeas 24, nays 20.

On the question to postpone, indefinitely, the *fifth* resolution,

It was determined in the affirmative—yeas 24, nays 20.

On the question to postpone, indefinitely, the *sixth* resolution,

It was determined in the affirmative—yeas 24, nays 20.

Mr. HOLMES, of Maine, submitted the following motion:

*Resolved*, That the Senate having, on the 15th day of February, passed the following resolutions:

“*Resolved*, That, upon the question whether the United States shall be represented in the Congress of Panama, the Senate ought to act with open doors, unless it shall appear that the publication of documents, necessary to be referred to in debate, will be prejudicial to existing negotiations.

“*Resolved*, That the President be respectfully requested to inform the Senate, whether such objection exists to the publication of the documents communicated by the Executive or any portion of them; and, if so, to specify the parts, the publication of which would, for that reason, be objectionable.”

To which the President returned the following message in answer, viz:

“WASHINGTON, February 16, 1826.

“*To the Senate of the United States*;

“In answer to the two resolutions of the Senate, of the 15th instant, marked (Executive,) and which I have received, I state, respectfully, that all the communications from me to the Senate, relating to the Congress at Panama, have been made, like all other communications upon Executive business, in *confidence*, and most of them in compliance with a resolution of the Senate requesting them confidentially. Believing that the established usage of free confidential communications, between the Executive and the Senate, ought, for the public interest, to be preserved unimpaired, I deem it my indispensable duty to leave to the Senate itself the decision of a question, involving a departure, hitherto, so far as I am informed, without example, from that usage, and upon the motives for which, not being informed of them, I do not feel myself competent to decide.

JOHN QUINCY ADAMS.”

*Resolved*, That, as the Senate have not been informed by the President, whether the publication of the documents, in relation to the proposed mission to the Congress of Panama, would affect any pending negotiations, it is expedient to proceed to the discussion of the subject of that mission with closed doors.

On motion by Mr. KING, the Senate adjourned.

THURSDAY, February 23.

The Senate resumed the consideration of the motion submitted yesterday, by Mr. HOLMES, of Maine, in relation to the proposed mission to the Congress at Panama.

On motion, by Mr. DICKERSON, of N. J., to amend the same, by striking out all after the

word “*Resolved*,” where it first occurs, and inserting in lieu thereof the following:

*Resolved*, That although the Senate cannot find, in the answer of the President of the United States to their resolutions of the 15th instant, relative to the proposed mission to Panama, any distinct information that the publication of the communications, alluded to in said resolutions, would or would not be prejudicial to existing negotiations, they find a strong objection on the part of the President, to the publication of those communications, inasmuch as they were made “in confidence, and most of them in compliance with a resolution of the Senate, requesting them confidentially.” And although the Senate have the right to publish communications so made, and to discuss the same, with open doors, without the assent of the President, when, in their opinion, the public interest may require such publication and such discussion, they do not think that present circumstances require the exercise of this right, so far as respects a discussion of those confidential communications with open doors. Therefore,

*Resolved*, That the discussion upon the proposed mission to Panama, and the confidential communications upon the same, be held with closed doors.

On motion, by Mr. WHITE, of Tenn.

To amend the proposed amendment, by striking out the following words: “*Resolved*, That the discussion upon the proposed mission to Panama, and the confidential communications upon the same, be held with closed doors,” and inserting “*Resolved*, That the Senate cannot, consistently with the duty which it owes to the United States, and to itself, proceed to consider the expediency of appointing Ministers to attend the Congress at Panama, until it can receive the information necessary to enable it to determine whether the consideration of that question ought to be with open or with closed doors.”

On the question, “Will the Senate agree to this amendment?” a division of the question was called for; and it was taken on *striking out*, and determined in the affirmative—yeas 27, nays 17.

On the question to insert the amendment last proposed, it was determined in the negative—yeas 18, nays 31.

The question recurring on the adoption of the amendment first proposed to the original motion, amended by striking out the last clause:

On the question, “Will the Senate agree to this amendment?” a division of the question was called for; and,

On the question to *strike out* all the original motion, after the word “*Resolved*,” where it first occurs, it was determined in the affirmative—yeas 31, nays 18.

On the question to insert the proposed amendment, it was determined in the affirmative—yeas 27, nays 16.

So it was

*Resolved*, That, although the Senate cannot find, in the answer of the President of the United States to their resolutions of the 15th instant, relative to

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the proposed mission to Panama, any distinct information that the publication of the communications, alluded to in said resolutions, would or would not be prejudicial to existing negotiations, they find a strong objection, on the part of the President, to the publication of those communications, inasmuch as they were made "in confidence, and the most of them in compliance with a resolution of the Senate requesting them confidentially." And, although the Senate have the right to publish communications so made, and to discuss the same with open doors, without the assent of the President, when, in their opinion, the public interest may require such publication and such discussion, they do not think that present circumstances require the exercise of this right, so far as respects a discussion of those confidential communications with open doors.

## FRIDAY, February 24.

On motion, by Mr. LLOYD, of Mass., that the Senate proceed to consider the resolution reported by the Committee on Foreign Relations, in relation to the expediency of sending Ministers to the Congress of Panama; it was determined in the affirmative—yeas 32, nays 12.

On motion, by Mr. HAYNE, of S. C., it was ordered that the further consideration of the resolution be postponed to, and made the order of the day for, Monday next.

## MONDAY, March 18.

The Senate resumed the consideration of the resolution reported by the Committee on Foreign Relations, relative to the expediency of sending Ministers to the Congress at Panama.

A motion was made by Mr. BENTON, of Mo., to amend the said resolution, by striking out all after "*Resolved*," and inserting "That the Senate cannot advise that it is expedient for the Government of the United States to send Ministers to the Congress of American nations at Panama, before it shall have received satisfactory information upon the following points: First, the subjects to which the attention of that Congress will be directed; secondly, the substance and form of the powers to be given to the respective Representatives; thirdly, the mode of organizing the Congress; fourthly, the mode of action in deciding the questions which may be submitted to it."

The Senate then adjourned.

## TUESDAY, March 14.

The Senate resumed the consideration of the resolution reported by the Committee of Foreign Relations, relative to the expediency of sending Ministers to the Congress of Panama, together with the amendment proposed thereto by Mr. BENTON.

On motion, by Mr. BENTON, of Missouri, the said amendment was modified as follows: Strike out all after "*Resolved*," and insert, "That it is not expedient for the United States

to send any Ministers to the Congress of American nations assembled at Panama, before it shall have received satisfactory information upon the following points: 1st. The subjects to which the attention of the Congress will be directed: 2dly. The substance and form of the powers to be given to the respective Representatives: 3dly. The mode of organizing the Congress: 4thly. The mode of action in deciding the questions which may be submitted to it."

On motion, by Mr. HAYNE, of South Carolina, that the further consideration of the resolution, with the proposed amendment, be postponed to Friday next; it was determined in the negative—yeas 20, nays 25.

On motion by Mr. REED, of Mississippi, that he be excused from voting on the proposed amendment, it was determined in the affirmative—yeas 32, nays 12.

On the question to agree to the proposed amendment to the resolution, it was determined in the negative—yeas 19, nays 24.

A motion, was made by Mr. VAN BUREN, of New York, to amend the resolution, by adding thereto the following:

*Resolved*, That the Constitution of the United States, in authorizing the President of the United States to nominate, and, by and with the advice and consent of the Senate, to appoint "Ambassadors, and other public Ministers," authorizes the nomination and appointment to offices of a diplomatic character only, existing by virtue of international laws; and does not authorize the nomination and appointment (under the name of Ministers) of Representatives to an Assembly of Nations, like the proposed Congress of Panama, who, from the nature of their appointment, must be mere deputies, unknown to the law of nations, and without diplomatic character or privilege.

*Resolved*, That the power of forming or entering (in any manner whatever) into new political associations, or confederacies, belongs to the people of the United States, in their sovereign character, being one of the powers which, not having been delegated to the Government, is reserved to the States or people; and that it is not within the constitutional power of the Federal Government to appoint Deputies or Representatives of any description, to represent the United States in the Congress of Panama, or to participate in the deliberation, or discussion, or recommendation, of acts of that Congress.

*Resolved*, As the opinion of the Senate, that (waiving the question of constitutional power) the appointment of Deputies to the Congress of Panama, by the United States, according to the invitation given, and its conditional acceptance, would be a departure from that wise and settled policy by which the intercourse of the United States with foreign nations has hitherto been regulated, and may endanger the friendly relations which now happily exist between us and the Spanish American States, by creating expectations that engagements will be entered into by us, at that Congress, which the Senate could not ratify, and of which the people of the United States would not approve.

*Resolved*, That the advantages of the proposed mission to the Congress of Panama, (if attainable,)

would, in the opinion of the Senate, be better obtained, without such hazard, by the attendance of one of our present Ministers near either of the Spanish Governments, authorized to express the deep interest we feel in their prosperity, and instructed fully to explain (when requested) the great principles of our policy, but without being a member of that Congress, and without power to commit the United States to any stipulated mode of enforcing those principles, in any supposed or possible state of the world.

And, on the question to agree thereto, it was determined in the negative—yeas 19, nays 24.

On the question to agree to the resolution reported by the committee, in the following words:

*Resolved*, That it is not expedient, at this time, for the United States to send any Ministers to the Congress of American nations assembled at Panama:

It was determined in the *negative*—yeas 19, nays 24.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are:

Messrs. Benton, Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Findlay, Hayne, Holmes, Kane, King, Macon, Randolph, Rowan, Van Buren, White, Williams, Woodbury.—19.

Those who voted in the negative, are:

Messrs. Barton, Bell, Bouligny, Chambers, Chase, Clayton, Edwards, Harrison, Hendricks, Johnson of Kentucky, Johnston of Louisiana, Knight, Lloyd, Marks, Mills, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey.—24.

On motion by Mr. MILLS, of Massachusetts, that the Senate proceed to consider the nominations of Richard C. Anderson, John Sergeant, and William B. Rochester, contained in the Message of the 26th December; it was determined in the affirmative—yeas 25, nays 19.

On the question, "Will the Senate advise and consent to the appointment of Richard C. Anderson?" It was determined in the affirmative—yeas 27, nays 17.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are:

Messrs. Barton, Bell, Benton, Bouligny, Chambers, Chase, Clayton, Edwards, Harrison, Hendricks, Johnson of Kentucky, Johnston of Louisiana, Kane, Knight, Lloyd, Marks, Mills, Noble, Reed, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey.—27.

Those who voted in the negative, are:

Messrs. Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Findlay, Hayne, Holmes, King, Macon, Randolph, Rowan, Van Buren, White, Williams, Woodbury.—17.

On the question, "Will the Senate advise and consent to the appointment of John Sergeant?" It was determined in the affirmative—yeas 26, nays 18.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are:

Messrs. Barton, Bell, Bouligny, Chambers, Chase, Clayton, Edwards, Findlay, Harrison, Hendricks, Johnson of Kentucky, Johnston of Louisiana, Kane, Knight, Lloyd, Marks, Mills, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey.—26.

Those who voted in the negative, are:

Messrs. Benton, Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Hayne, Holmes, King, Macon, Randolph, Reed, Rowan, Van Buren, White, Williams, Woodbury.—18.

On the question, "Will the Senate advise and consent to the appointment of William B. Rochester?" It was determined in the affirmative—yeas 28, nays 16.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are:

Messrs. Barton, Bell, Benton, Bouligny, Chambers, Chase, Clayton, Edwards, Findlay, Harrison, Hendricks, Johnson of Kentucky, Johnston of Louisiana, Kane, Knight, Lloyd, Marks, Mills, Noble, Reed, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Dyke, Willey.—28.

Those who voted in the negative, are:

Messrs. Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Hayne, Holmes, King, Macon, Randolph, Rowan, Van Buren, White, Williams, Woodbury.—16.

So it was

*Resolved*, That the Senate advise and consent to the appointments of Richard C. Anderson, John Sergeant, and William B. Rochester, agreeably to their nominations respectively.

Mr. BERRIEN, of Georgia, submitted the following resolution:

*Resolved*, That the injunction of secrecy be removed from the Journal of the Senate, on the subject of sending Ministers to the Assembly of American Nations at Panama, and that the Secretary of the Senate cause the same to be published, viz:

Resolutions of the Senate of the 15th of February, and proceedings thereon. Proceedings of the Senate of the 22d, 23d, and 24th February, and of the 13th and 14th of March.

The Senate proceeded to consider the resolution.

On the question, "Will the Senate agree to the resolution?" It was determined in the affirmative—yeas 37.

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are:

Messrs. Barton, Benton, Berrien, Bouligny, Branch, Chambers, Chandler, Chase, Cobb, Dickerson, Eaton, Edwards, Findlay, Harrison, Hayne, Hendricks, Holmes, Johnson of Kentucky, Johnston of Louisiana, Kane, King, Lloyd, Macon, Marks, Mills, Noble, Reed, Rowan, Ruggles, Sanford, Seymour, Smith, Van Buren, White, Willey, Williams, Woodbury.—37.

So it was

*Resolved*, That the injunction of secrecy be removed from the Journal of the Senate, on the sub-

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*Debate on the Panama Mission in Secret Session.*

[SENATE.]

ject of sending Ministers to the Assembly of American Nations at Panama, and that the Secretary of the Senate cause the same to be published, viz:

Resolutions of the Senate of the 15th of February, and proceedings thereon. Proceedings of the Senate of the 22d, 23d, and 24th February, and of the 13th and 14th of March. True extracts from the Journal.

Attest, WALTER LOWRIE, Sec'y.

*Debate on the Panama Mission in Secret Session.*

[These proceedings being published, here is the place to insert that part of the debate, in the secret session, above sketched out, which it is in our power to publish from authentic sources. It is therefore here introduced.]\*

The following resolution, submitted by the Committee of Foreign Relations, being under consideration—

“Resolved, That it is not expedient, at this time, for the United States to send any Ministers to the Congress of American Nations assembled at Panama:”—

Mr. HAYNE, of South Carolina, addressed the Senate, in substance, as follows:

In order to decide on the expediency of the proposed mission to the Congress of Panama, and to ascertain how it may affect our neutrality, it is necessary to determine, in the first place, *the character of that Congress*. And here I shall take it for granted, that the character of the Congress will, in no degree, be affected by the instructions which may be given to our Ministers, but can only be ascertained from its declared and acknowledged objects. It is from the *documents*, published to the world, and from these alone, that the public can know the purposes for which this Congress is to be assembled. These must stamp its character as peaceful or belligerent, in the estimation of mankind. Now, on this branch of the subject, we are most fortunately furnished with information, authentic, full, and perfectly satisfactory

\* This debate took place with closed doors, but with the understanding that each Senator might (after it was over) publish his speech—of which he, of course, would be the reporter, and of which privilege several Senators availed themselves. It was the principal debate of the session, and entered largely into the contest, then hot, for party supremacy—the administration staking itself upon the mission, as the opposition did against it. It was carried through both Houses of Congress, but deprived of its *prestige* under the heavy blows which it received; and became abortive from the failure of the Congress ever to meet. Losing, as it has, the hot interest derived from party contention, the debate (stripped of temporary topics) retains a permanent value from the ability which it developed, and the views of national policy which it opened. Amongst the ablest emanations of the mind which it presented, was the report from the Senate's Committee of Foreign Relations, drawn by Mr. Taswell, one of the committee, and presented by Mr. Macon, its chairman—who, when complimented upon the ability of his report, was accustomed to answer, with the integrity of his character—“Yes! It is a very able report: Taswell wrote it.”

information, not possessed by us alone, but which has been published to all the world. The following are the sources from whence we derive our knowledge as to the character and objects of the Congress of Panama—sources equally open to every nation in Europe:

1st. A work on the necessity of a general federation of the South American States, published at Lima in 1825, by *Bernardo Montecagudo*, Minister of State and Foreign Affairs of Peru, &c.

2d. Bolivar's circular and proclamation.

3d. The conventions between five of the Spanish American Republics, *under which* the Congress is about to assemble.

4th. The communication in the official Gazette of Colombia, in February last, of some of the specific points which are to form the subjects of the deliberations of the Congress.

From these combined sources, we will be enabled to derive the most satisfactory and conclusive information, as to the true character of the Congress; and when that shall be ascertained, the task will be easy to show what effect must be produced on our relations towards Spain by our taking any part in the deliberations of that assembly.

From the work of *Montecagudo*, (an abstract of which will be found in the last number of the North American Review,) it appears that the project of a Confederacy of the South American States was conceived as early as 1821; that, in 1823, Bolivar, as President of Colombia, invited Mexico, Peru, Chili, and Buenos Ayres, “to send delegates to Panama, with the express design of establishing a CONFEDERACY.” In December, 1824, conceiving that the period had now arrived for carrying this great object into effect, he issued a circular, proposing to the new States that delegates should “immediately be sent to Panama by those Governments which had agreed to JOIN in the CONFEDERACY;” and he there characterizes the meeting as one “which was to serve as a COUNSEL to us in our distresses,” (which can only mean, to advise them how to carry on the war, so as to bring it to a successful issue,) “and to be a RALLYING POINT in our common dangers;” (in other words, to furnish the means of making a successful stand against the common enemy, old Spain, by equipping fleets and raising armies, and by furnishing respectively their contingent of men, arms, and money.) The author of this work was a man of uncommon talent and great influence, who not only filled the station of Minister of State in Peru, but, in behalf of that State, negotiated and signed the Convention with Colombia, in relation to this very business. His authority, therefore, is entitled to great weight, on a question with which he was so intimately acquainted. He sums up in two lines, the duties of the Congress, and informs us it is designed to give “INDEPENDENCE, PEACE, AND SECURITY, TO THE NEW STATES.” *Independence* to colonies en-

gaged in a contest with the mother country for its establishment—*Peace*, to nations actually involved in war—*Security*, to those who are exposed to all the casualties of invasion from abroad and convulsions within. And how are those objects to be attained? The answer is obvious, and is given by all the documents before us: By *ALLIANCES*, offensive and defensive; by which each State stipulates to make a common cause, and to furnish their respective quotas of men, of money, and of arms.

On this point, nothing shall be left to conjecture or inference. I will produce the highest possible evidence—evidence which must satisfy the most sceptical as to the true character of the Panama Congress. The States represented there have entered into formal *TREATIES*—and it is under these solemn Conventions that this Congress is assembled. Under the call made upon the President by the Senate on the 3d of January last, he has submitted to us Conventions between

The Republic of Colombia and that of Chili,  
The Republic of Colombia and Peru,  
The Republic of Colombia and the Federation  
of the Centre of America, and  
The Republic of Colombia and the U. Mexican States.

On looking into these Conventions, (some of which were entered into as early as 1822, and one as late as September, 1825,) we discover that, in the execution of the plan of the Liberator, of uniting all the Spanish American States into "ONE GREAT CONFEDERACY," he has succeeded in forming among them treaties of alliance offensive and defensive, in peace, and in war, and the Congress of Panama *grows out of*, and is the first fruit of, that alliance. It is, in fact, a Congress of confederated belligerent States, convened for the great purpose of bringing the war, by their combined efforts, to a speedy and successful termination, and, at the same time, of establishing a plan of general co-operation, in all cases whatsoever. These assertions I shall establish beyond the possibility of a doubt, by a brief reference to those Conventions.

In the Convention between Colombia and Chili, we find the following provisions:

By the first article, it is declared that "the Republic of Colombia and the State of Chili, are united, bound, and *confederated, in peace and war*, to maintain by their influence and forces, by sea and land—as far as circumstances permit—their *Independence of the Spanish nation*, and of any other foreign domination whatsoever."

By the second article, these two States "contract a *league of close alliance for the common defence*—for the security of their independence and liberty, for their reciprocal and general good, and for their internal tranquillity, obliging themselves to *succor each other*, and to repel in common *every attack* or invasion, which may in any manner threaten their political existence."

By the third article it is declared, "the Republic of Colombia binds itself to assist, with the *disposable sea and land forces*; of which the number, or its equivalent, shall be fixed at a *meeting of Plenipotentiaries*."

Then follow the thirteenth and fourteenth articles, under which the Congress at Panama is about to assemble. Thirteenth, "Both parties oblige themselves to interpose their good offices with the Governments of the other States of America, formerly Spanish, to enter into this *COMPACT OF UNION, LEAGUE, and CONFEDERATION*;" and, fourteenth, "As soon as this great and important object has been attained, a *GENERAL ASSEMBLY OF AMERICAN STATES* shall be convened, [at *Panama* as subsequently stated,] composed of their *Plenipotentiaries*, with the charge of cementing, in the most solid and stable manner, the intimate relations which ought to exist between all and every one of them, and which may serve as a *COUNCIL IN THE GREAT CONFLICT*, as a *RALLYING POINT* in the *COMMON DANGERS*, as a faithful interpreter of the public treaties, when difficulties occur, and as an umpire and conciliator in their disputes and differences."

Now, sir, in all the other Conventions, similar, and, in some of them, even stronger, language is held. They all provide for *alliances*, offensive and defensive, for the purpose of bringing the present war against Spain to a conclusion, by furnishing their quotas of men, money, and ships; and they all stipulate that, as soon as the *ALLIANCE* shall become general, *this Panama Congress is to be convened*, as the first step to be taken under it. It is the "*GREAT COUNCIL*" of these belligerent States, and will of course be *perpetual*, or, at all events, will have a duration equal to that of the Confederacy itself. [Mr. H. here referred minutely to all the Conventions, and argued from them in support of his position.] The last document to which I shall refer, is the Official Gazette of Colombia, of February last, in which the objects of the Congress are thus stated:

"1. To form a solemn compact, or league, by which the States, whose Representatives are present, will be bound to unite in *prosecuting the war* against their common enemy, old Spain, or against any other power, which shall assist Spain in her hostile designs, or any otherwise assume the attitude of an enemy.

"2. To draw up and publish a manifesto, setting forth to the world the justice of their cause, and the relations they desire to hold with other Christian powers.

"3. To form a Convention of Navigation and Commerce, applicable both to the Confederated States, and to their allies.

"4. To consider the expediency of combining the forces of the Republics, to free the Islands of Puerto Rico and Cuba from the yoke of Spain, and, in such case, what contingent each ought to contribute for this end.

"5. To take measures for joining in a prosecution of the war at sea, and on the coasts of Spain.

"6. To determine whether these measures shall

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also be extended to the Canary and Philippine islands.

"7. To take into consideration the means of making effectual the declaration of the President of the United States, respecting any ulterior design of a foreign power to colonize any portion of this continent, and, also, the means of resisting all interference from abroad with the domestic concerns of the American Governments.

"8. To settle, by common consent, the principles of those rights of nations, which are in their nature controvertible.

"9. To determine on what footing shall be placed the political and commercial relations of those portions of our hemisphere which have obtained, or shall obtain, their independence but whose independence has not been recognized by any American or European power, as was for many years the case with Hayti."

From these documents no man can deny that the Congress of Panama is to be composed of deputies from *belligerent States*, and that its objects are *essentially belligerent*. These objects are not concealed, but are publicly avowed, and known to the world. It is to be an assembly of confederates, differing very little from the old Congress under our Articles of Confederation, to which, indeed, it bears a striking resemblance.

The question now arises, whether a neutral State can join in such a council without violating its neutrality? Can the United States lawfully send deputies to a Congress of the confederated Spanish American States?—a Congress which not only has objects confessedly connected with the prosecution of the war, but when it is notorious that these belligerent objects create the very occasion of its assembling? Can we do so without departing from our neutral relations towards Spain? Is it possible, Mr. President, that this can be seriously questioned? It will not bear an argument. There can be no difference under the law of nations—for there is none in reason or justice—between aiding a belligerent in *council* or in *action*—between consulting with him in respect to belligerent measures, or furnishing the men and money to accomplish them. To afford to such a Congress as I have shown this at Panama to be, even the lights of our wisdom and experience—to enter into consultations with them as to the means of bringing the contest to a speedy and successful issue—to advise with them how to proceed, and when to proceed—(and it appears from the documents that we are quite ready with our advice in these respects,) unquestionably must be a total departure from our neutrality. It is no answer to this argument to say, that our Ministers, when they take their seats, and become members of the Congress, will not interfere in the discussion of belligerent questions, and will confine themselves exclusively to those which are in their nature peaceful. If the character of the Congress is belligerent—no neutral can lawfully be there. If, for any purpose whatever, questions connected with the further prosecution of the war, are to be there discus-

ed and decided, our Ministers cannot take their seats in the assembly without involving us, by that very act, in the contest. A strict and honorable neutrality must keep us out of any meeting not having peaceful objects *exclusively*. The law of nations, in this respect, cannot differ from those rules of municipal law, founded in the common sense of mankind—which involve, in a common guilt, all who associate with those engaged in any unlawful enterprise. It is not permitted to individuals, nor can it be permitted to nations, to excuse themselves for acting with those engaged in belligerent enterprises, by alleging that their own purposes are peaceful. Sir, I hold that if you go into council at all with such powers, you become answerable for all their acts. At this moment a case occurs to me that took place many years ago, in England, and which affords an apt illustration of this principle. Lord Dacres, a young nobleman of wild and irregular habits, associated himself with a party who were engaged in robbing a Park—one of that party, without the knowledge or consent of Lord Dacres, killed the game-keeper. His lordship was taken up, and tried for the murder; and though probably as innocent of that offence as either of us, he was, according to the laws of England, found guilty. No rank or influence could save him—he perished on the gallows—a victim to the strict, though necessary rule, which involves in a common fate all who associate and act with others engaged in any unlawful pursuit.

But an attempt is made to remove all our apprehensions on this subject, (and it comes from a high quarter too,) by the *assurance* that Spain is just about to acknowledge the independence of her former Colonies, *under our mediation*. The Secretary of State, in his report which accompanies the President's Message of the 9th January, in answer to our call for information, transmits a mass of documents to show that our Government has invoked the aid of Russia; that the Emperor has interfered at our request; and that there is a flattering prospect of speedy and entire success. So says Mr. Middleton—so says Mr. Clay. But, Mr. President, it fortunately happens that the Senate, on the 80th January, made *another call* for information on this point, and the answer of the President, of the 1st of February, dispels the illusion entirely. The three letters of Mr. Everett, there disclosed, demonstrate that there is no hope, whatever, of a peace. The Minister of the Spanish Government, (Mr. Zea,) declares that the determination of the king, on that subject, is *unalterable*—he will stand upon his naked right, and look to Providence, should all other means fail. But this is not all. The Russian Minister concurs in the views of Mr. Zea, and the British Minister will not interfere. In short, it is proved by these documents that all hope of a peace is entirely at an end. The hopes raised by the message of the 9th of January are thus totally crushed by that of the 1st of February. This no gentleman will *now* question.

It has been well remarked by the Committee, in their Report, that no nation (unless restrained by their weakness) ever permitted such an interference as we are about to attempt, without redressing the wrong by war. And surely, sir, we are not to be called upon to violate our neutral obligations towards Spain — because Spain is weak. If a sense of justice, and a due regard to our own character and our interests, should not restrain us from a measure of that kind, perhaps we may be influenced by the consideration, that a violation of neutrality on our part may lead to similar violations on the part of the powers of Europe, and that we may thus be the means of destroying those whom we mean to serve and hope to save.

It is to be a CONGRESS, a deliberative Assembly, composed of DEPUTIES, with undefined powers; it is called in the conventions "a great Council;" and though the members in some places are called "Plenipotentiaries," yet, in others, they receive different appellations; and Mr Clay himself, in one place, considers them as "REPRESENTATIVES," and elsewhere describes them as "*Commissioners*." They cannot be "Ambassadors:" for they are not to go accredited to any sovereign State. They will not be Ministers to Colombia, within whose territory the Congress is to be convened; they must present their *credentials* to the Congress itself, by whom their validity must be decided on, and the members admitted to their seats. It is only by the special provisions of the "Conventions," that the Deputies could claim the privileges and immunities of Ambassadors, and as no such stipulations have been made in our favor, it follows, that our Deputies will be indebted even for protection to the Congress of which they are to be members. In what form the deliberations are to be conducted, we know not, but we are expressly told that their deliberations may be "confidential;" and I infer from a provision which authorizes a change in the place of meeting "with the consent of a *majority* of the *States*," that they will vote *by States*, and that a *majority* will govern. Mr. Salazar tells us expressly, that "*we may form an EVENTUAL ALLIANCE, for certain purposes, to remain secret*"—and adds, "that the *conferences* held on this subject, being *confidential*, would increase mutual friendship, and promote the respective interests of the parties."

And here, Mr. President, I will insist, that, if this mission were liable to none of these objections, there is not a single object specified in the invitations and answers, or in the message of the President, which would justify the measure proposed. They are all either dangerous, or inexpedient, or unnecessary; and this I will attempt to prove, by a brief examination of each of them.

The first great subject to which our attention at this Congress is to be called, arises out of the pledge \* which Mr. Monroe is supposed to have

given, "not to permit any foreign power to interfere in the war between Spain and her colonies;" and it appears, from the correspondence, to be the special object of the new States to get us to enter into treaties to redeem that pledge, according to the construction they have chosen to put upon it, and in which, I am sorry to add, the Executive seems to have acquiesced. Mr. Obregon tells us, that the United States are only expected to take part in those matters which the "*late administration pointed out* as being of general interest, for which reason," says he, "one of the subjects which will occupy the attention of the Congress, will be the *resistance or opposition to the interference of any neutral nation in the question and war of independence between the new powers of the continent and Spain*;" and "that, as the *POWERS OF AMERICA ARE OF ACCORD* as to *resistance*, it behooves them to *discuss the means* of giving to that resistance all possible force, that the evil may be met, if it cannot be avoided; and the only means of accomplishing this object is, by a *previous concert* as to the *mode* in which each of them shall lend its co-operation: for, otherwise, resistance would operate partially, and in a manner much less certain and effective.

"The opposition to *Colonization in America*, by the European powers, will be another of the questions which may be discussed, and which is in like predicament with the foregoing."

Mr. Salazar holds language on this subject still more explicit.

Now I do positively deny that Mr. Monroe ever pledged this nation to go to war, or make treaties, to prevent the interference of any European nation in the present contest. I deny that he had a right to make any such pledge; and most of all do I deny that any sanction has been given to such an idea by the Senate, the House of Representatives, by the States, or by the people of the United States. The language of Mr. Monroe is extremely vague and indefinite. That great and good man well knew that he had no power to use any but a moral force on that question; and beyond this moral influence over the councils of the nations of Europe, he neither attempted nor desired to go. He well knew—every intelligent man in the United States knows—that this nation is not now, and never has been, prepared to go to war for the independence of South America. The new States have always carried with them our warmest wishes for their success—but beyond the indulgence of a sincere and friendly sympathy, we have never been willing to proceed. Mr. Monroe's declaration, I repeat, was

States to prevent colonization in America, and also to prevent the interference of any European nation in the present contest, there are two important documents before the House of Representatives which were not before the Senate, viz: 1. The letter from Mr. Adams to Mr. Anderson, dated 27th May, 1823, in which the policy of this Government is fully explained on that subject. 2. The Message of the President to the House of Representatives, in which he goes into an explanation of his present views.—*Notes by Mr. H.*

\* In relation to the supposed PLEDGE made by the United

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intended to produce a moral effect abroad; he designed it for the atmosphere of Europe, and therefore it was couched in such terms that, while it did not commit us to any overt acts, it left foreign nations under a vague impression of what we might do, if the event alluded to should ever happen. The substance of Mr. Monroe's statement was, "that he should consider any attempt on their part (the powers of Europe) to extend their system to any portion of this hemisphere, as dangerous to our peace and safety," and as "the manifestation of an unfriendly disposition towards the United States." It is obvious that we are left by this pledge altogether free to act in any emergency according to circumstances and a sense of our own interests. We have incurred no obligations to others by the declaration; and it is our policy to incur none. But it now appears that the new States have conceived themselves *entitled to our aid* whenever foreign interference shall be threatened, and (what is truly unfortunate) it further appears, that the new Administration have acknowledged their claims, and admitted our obligations; they have acted, and are now about to act, on the presumption that the Spanish American States may rightfully claim, and that we are bound to grant, our assistance against all nations who may "hereafter interfere in any way whatever in the question and war of independence." Nay, so far have our Government gone in this respect, that they have actually claimed commercial privileges from these States on the ground that we are to be considered as "one of the American Nations," and "within the pale of the great AMERICAN SYSTEM;" that we are "prepared to bear the brunt of the contest which will arise, should any foreign power attempt to interfere." To show how far our Government have proceeded in this course, I must be permitted to read a few pages from the documents before us. In the letter of our Minister to Mexico to the Secretary of State, dated 28th September, 1825, after giving an account of the difficulties which had arisen in making a treaty with Mexico, in consequence of the desire of that Government to introduce an article putting it in their power to grant special commercial privileges to the other Spanish American States, he informs us that he insisted that we should be entitled to similar privileges, because "we were bound to them by similar fraternal ties." To some objections urged against our claims on the ground that we had not yet taken part in the war, our Minister replied in the following words, viz: "To these observations I replied, that, against the power of Spain, they had given sufficient proof that they required no assistance, and the United States had *pledged themselves not to permit any other power to interfere* either with their independence or form of Government; and that, as in the event of such an attempt being made by the powers of Europe, we would be compelled to take the most active and efficient part, and to *bear the*

*brunt of the contest*, it was not just that we should be placed on a less favorable footing than the other Republics of America, whose existence we were *ready to support at such hazards*." The Minister then goes on to state, that, after explaining what we had already done, he declared "*what further we were ready to do*, in order to defend their rights and liberties; but that this could only be expected from us, and could only be accomplished, by a strict union of all the American Republics, on terms of perfect equality and reciprocity; and repeated, that, it was the obvious policy of Europe to divide us into small Confederacies, with separate and distinct interests, and as manifestly ours to form a SINGLE GREAT CONFEDERACY, which might oppose one united front to the attacks of our enemies."

And now, sir, I must put the question directly and seriously to the Senate, whether they are prepared to send Ministers to the Congress of Panama, for the purpose of making effectual this pledge of the President of the United States, as construed by the present administration, and understood by the Spanish American States? Whatever may be the opinion of others, I, for one, have no hesitation in declaring that I am not prepared for any such proceeding; I am not ready *now* to declare that I will involve my country in all the horrors of war for the establishment of South American independence; and, even if I were prepared to say, that, rather than permit the interference of any foreign nation in the contest, "we must fight," still I should think it wise and prudent not to commit ourselves by treaties or compacts, but to reserve the right to act when the contingency shall happen, as our feelings or interests may then dictate. It is of the last importance that we should reserve this privilege to ourselves; that we should enter into no stipulations whatever with other nations on such a subject. But, should we send Ministers to Panama for these objects, we will not be free to pursue this course. If our Ministers go there with our sanction, committed as we know the President to be, we must either sanction the compacts which may be entered into, or disappoint the just expectations which we will have raised. In the one case, our interests will be sacrificed, and, in the other, our friendly relations with the new States will be interrupted. Let us, then, avoid this dilemma, by not placing ourselves voluntarily in a situation which will leave us only a choice of difficulties, and impose upon us the hard necessity of offending our friends or injuring ourselves.

Connected with this object, is another, bearing a close resemblance to it: "the opposition to COLONIZATION in America" by any European power. If, by this, it is to be understood that we are to interfere to obstruct the settlement of the territories in America owned by Russia or England, it must speedily involve us in an unjust and unnecessary war. But, if the design is to enter into compacts with the South American



States, not to permit any colonization within our respective limits, or if we are to make common cause in resisting all such attempts, then I must boldly declare that the scheme is, in the one case, derogatory to our honor, and, in the other, dangerous to our safety. What! is it come to this, that the United States of America are to come under obligations to others; to bind themselves to nations of yesterday, to preserve their own Territories from invasion, and their homes and their altars from pollution? Nay, are we, at this period of our history, to enter into solemn vows, that we will neither permit ourselves to be conquered, nor to be sold? Sir, the idea of treaty stipulations against colonization is degrading and unmeaning, unless it is intended that we shall guarantee to the new States the possession of their Territories; and, if that is the plan, it is as unwise as it is dangerous.

The next subjects to be considered by the Congress of Panama, are the suppression of the AFRICAN SLAVE TRADE and the INDEPENDENCE OF HAYTI; and I admit that these involve questions of deep interest to us all. The United States were the first to set its face against the slave trade, and the first to suppress it among their own citizens. We are entitled to the honor of having effectually accomplished this great object, not more by the force of our laws, than by the omnipotent power of public opinion—a power, in this country, paramount to the laws themselves. In all measures of this character, every portion of our fellow-citizens have cordially co-operated; and, even in those States where slavery still exists, the people have gone heart and hand with their Government in every measure calculated to cut up this nefarious trade by the roots. In the State which I have the honor to represent, any man concerned, directly or indirectly, in this traffic, would be indignantly driven out of society. Having done so much, we may well call upon other nations “to go and do likewise,” before they can be permitted to taunt us on this subject; as one of these South American Ministers has done.

The question of slavery is one, in all its bearings, of extreme delicacy, and concerning which I know of but a single wise and safe rule, either for the States in which it exists, or for the Union. It must be considered and treated entirely as a DOMESTIC QUESTION. With respect to foreign nations, the language of the United States ought to be, that it concerns the peace of our own political family, and therefore we cannot permit it to be touched; and in respect to the slaveholding States, the only safe and constitutional ground on which they can stand, is, that they will not permit it to be brought into question, either by their sister States, or by the Federal Government. It is a matter, Mr. President, for ourselves. To touch it at all, is to violate our most sacred rights—to put in jeopardy our dearest interests—the peace of our country—the safety of our fami-

lies, our altars, and our firesides. Sir! on the question of our slave institutions, so often incidentally mentioned, I will take *this opportunity*, once for all, to declare, in a few words, my own feelings and opinions. It is a subject to which I always advert with extreme reluctance, and never, except when it is forced upon me. On the present occasion the subject has been forced upon our consideration, and when called upon to give my sanction to the discussion by our Ministers, (in connection with a foreign Congress,) of questions so intimately connected with the welfare of those whom I represent, I cannot consent to be silent. On the slave question, my opinion is this: I consider our rights in that species of property as not even open to discussion, either here or elsewhere; and in respect to our duties, (imposed by our situation,) we are not to be taught them by fanatics, religious or political. To call into question our rights, is grossly to violate them—to attempt to instruct us on this subject, is to insult us—to dare to assail our institutions, is wantonly to invade our peace. Let me solemnly declare, once for all, that the Southern States never will permit, and never can permit, any interference whatever, in their domestic concerns, and that the very day on which the unhallowed attempt shall be made by the authorities of the Federal Government, we will consider ourselves as driven from the Union. Let the consequences be what they may, they never can be worse than such as must inevitably result from suffering a rash and ignorant interference with our domestic peace and tranquillity. But, while I make these declarations, I must be permitted to add, that I apprehend no such violation of our constitutional rights. I believe that this House is not disposed, and that the great body of our intelligent and patriotic fellow-citizens in the other States have no inclination, whatever, to interfere with us. There are *parties*, indeed, composed, some of them, of fanatics, and others of political aspirants, who are attempting, vainly I hope, to turn the current of popular opinion against us. These men have done us much harm already, and seem still fatally bent upon mischief. But, if we are true to ourselves, we will have nothing to fear. Now, sir, if it is the policy of the States not to suffer this great question to be touched by the Federal Government, surely it must be the policy of this Government, exercising a paternal care over every member of the political family, not to suffer foreign nations to interfere with it. It is their imperative duty to shun discussion with them—and to avoid all treaty stipulations, whatever, on any point connected directly or remotely with this great question. It is a subject of too delicate a nature—too vitally interesting to us, to be discussed abroad. On this subject we committed an error when we entered into treaties with Great Britain and Colombia for the suppression of the *slave trade*. That error has been happily corrected. The first treaty has

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failed, and the second was nearly unanimously rejected by this body. Our policy, then, is now firmly fixed—our course is marked out. With nothing connected with slavery can we consent to treat with other nations, and, least of all, ought we to touch the question of the independence of Hayti in conjunction with Revolutionary Governments, whose own history affords an example scarcely less fatal to our repose. Those Governments have proclaimed the principles of “liberty and equality,” and have marched to victory under the banner of “universal emancipation.” You find men of color at the head of their armies, in their Legislative Halls, and in their Executive Departments. They are looking to Hayti, even now, with feelings of the strongest confraternity, and show, by the very documents before us, that they acknowledge her to be independent, at the very moment when it is manifest to all the world beside, that she has resumed her colonial subjection to France. Sir, it is altogether hopeless that we could, if we would, prevent the acknowledgment of Haytian independence by the Spanish American States; and I am constrained to add that I must doubt, from the instruments to be employed by our Government, whether they mean to attempt to do so. We are to send, it seems, an honest and respectable man, but a distinguished advocate of the *Missouri restriction*—an acknowledged abolitionist—to plead the cause of the South, at the Congress of Panama. Our policy, with regard to Hayti, is plain. We never can acknowledge her independence. Other States will do as they please—but let us take the high ground, that these questions belong to a class, which the peace and safety of a large portion of our Union forbids us even to discuss. Let our Government direct all our Ministers in South America and Mexico to *protest* against the independence of Hayti.\* But let us not go into council on the slave trade and Hayti. These are subjects not to be discussed anywhere. There is not a nation on the globe with whom I would consult on that subject, and, least of all, the new Republics.

I proceed next to consider the great object (which seems to lie so near to the hearts of some of our statesmen), of building up what they are pleased to call “*AN AMERICAN SYSTEM*”—terms which, when applied to our domestic policy, mean *restriction* and *monopoly*, and when applied to our foreign policy, mean “*entangling alliances*,” both of them the fruit of that prurient spirit which will not suffer the nation to advance gradually in the development of its great resources, and the fulfilment of its high destinies, but would accelerate its march

by the most unnatural and destructive stimulants. “As Europe (says Mr. Caneas) has formed a *continental system*, America should form a *system for herself*.” “The mere assembling (says Mr. Salazar) of the Congress, by showing the ease with which America can combine, will increase our political importance.” In plain terms, Mr. President, we are called upon to form a *HOLY ALLIANCE on this side of the water*, as a counterpoise to the Holy Alliance on the other side of it. Are the people of this country prepared for that? What is there in the history or character of the Holy Alliance that makes it a fit subject for our imitation? This combination of nations at peace, to maintain certain principles and institutions, contains the most atrocious violation of the natural and social rights of man that the world has ever seen. It is wrong—most fatally wrong—and it makes no difference, in reason or justice, what the principles to be maintained are. It is of the essence of national independence, that every country should be left free to adopt and to change its principles and its policy according to its own views of its own interests; and from the very bottom of my soul I abhor the idea of combinations among sovereign States, for any purpose whatever. Great Britain, the only nation in Europe that possesses the shadow of freedom, has refused to join the Holy Alliance. I hope we shall follow her example in having nothing to do with this “great American Confederacy”—Mr. Canning declared that such an alliance was unconstitutional—and surely, if it was so in Great Britain, it must be so *here*.

I come now, Mr. President, to the last subject specified by the South American Ministers, in which we are expected to take a part, and which is strongly relied upon here as constituting in itself a decisive inducement for our sending Ministers to the Congress of Panama—I mean the fate of CUBA. Now, sir, I have on this point the authority of the President himself, that neither he nor his Cabinet considered this question as furnishing any reason in favor of this mission. If the President or his Cabinet had supposed it material, he would have stated it to us as one of the reasons which rendered the mission desirable. But neither in his message, nor in the documents which accompanied it, did he say one word about Cuba; and all our information on the subject has been extracted by the call for information made by the Senate on the 3d January last. And yet no man can deny that this is one of the most interesting and important topics connected with the subject. But, sir, the fact is, that the Executive is unfortunately so committed, in relation to Cuba, as to leave themselves bound hand and foot, deprived of the power of taking a single step that could be productive of any beneficial results; and therefore, no doubt, it was, that the President did not deem it important to mention the subject to us at all. On examining the documents now before us, it will

\* The President, in his Message to the Senate, mentions neither the *SLAVE TRADE* nor *Hayti*, but they are mentioned in the documents which accompany that message, as questions which were to form subjects of deliberation at the Congress of Panama. This was all the light the Senate possessed on the subject. In the message to the House, the matter is presented in a light somewhat different.—*Note by Mr. H.*

appear, that while our Government has taken the bold ground in relation to Russia, France, and Great Britain, that "*they will not permit any nation except Spain, to take Cuba, under any circumstances whatever,*" they have, in relation to the South American States, declared expressly that we *cannot interfere*. Though the interests of the United States would be much more deeply affected by the possession of Cuba, by any of the new States than by France, or even by Russia, yet, while, in relation to the latter, we throw ourselves fearlessly into the breach, and have declared "we will not permit them to act"—with respect to the former, "we can see no ground on which we can forcibly interfere." Mr. Clay, in his letter to Mr. Middleton, 26th December, 1825, says—"On this subject it is proper we should be perfectly understood by Russia. For ourselves, we desire no change in the possession of Cuba, as has been heretofore stated. *We cannot allow a transfer of the island to any European power.* But if Spain should refuse to conclude a peace, and obstinately resolve on continuing the war, although we do not desire that *either Colombia or Mexico should acquire the island of Cuba, the President cannot see any justifiable ground on which we can forcibly interfere.* Upon the hypothesis of an unnecessary protraction of the war, imputable to Spain, it is evident that Cuba will be her only *point d'appui*, in this hemisphere. How CAN WE INTERPOSE on that supposition, against the party clearly having right on his side, in order to restrain or DEFEAT A LAWFUL OPERATION OF WAR? If the war against the islands should be conducted by those Republics in a desolating manner; if, contrary to all expectation, they should put arms into the hands of one race of the inhabitants to destroy the lives of another; if, in short, they should countenance and encourage excesses and examples, the contagion of which, from our neighborhood, would be dangerous to our quiet and safety; the Government of the United States *might* feel itself called upon to interpose its power. But it is not apprehended that any of those contingencies will arise, and, consequently, it is most probable that the United States, should the war continue, will remain hereafter, as they have been heretofore, neutral observers of the progress of its events.

"You will be pleased to communicate the contents of this despatch to the Russian Government. And as, from the very nature of the object which has induced the President to recommend to the Governments of Colombia and Mexico, a *suspension* of their expeditions against the Spanish islands, *no definite time* could be suggested for *the duration of that suspension*, if it should be acceded to, it must be allowed, on all hands, that it ought *not to be unnecessarily protracted.*" \*

\* In relation to *Cuba and Porto Rico*, the President's Message to the Senate, and the documents which accompanied it, did not mention them at all. In answer to the call

In accordance with these views, Mr. Clay writes to Mr. Salazar, 20th December, 1825—"The President believes that a *suspension for a limited time* of the sailing of the expedition which is understood to be fitting out at Carthagena, or of any other expedition which may be contemplated against either of those islands (Cuba and Porto Rico) by Colombia or Mexico, would have a salutary influence on the great work of peace." And again—"he expresses the hope that the Republic of Colombia will see the expediency in the actual posture of affairs of forbearing to attack those islands, *until a sufficient time has elapsed* to ascertain the result of the pacific efforts which the great powers are believed to be now making on Spain." Well, that time has elapsed—the result is ascertained. The mediation has failed—and the Executive stands fatally pledged—not to "interpose" to defeat "a lawful operation of war" on the part of those "who have right on their side," unless, indeed, the "*manner*" of conducting that operation should induce us to change our position; and this, says the Secretary, "is not apprehended."

Thus, then, it manifestly appears that our faith is plighted, and that we have acknowledged the high obligations of duty not to interfere, unless, indeed, the slaves should be excited to murder their masters; and then, says Mr. Clay, perhaps we *might*; and as to the invasion, all we have felt ourselves authorized to ask is, a small delay in the sailing of the expedition, only until the effect of our interposition with Russia shall be ascertained—of the total failure of which we are now officially informed. I repeat, therefore, our Executive has forever closed the lips of their Ministers on this subject, and there is no pretence for supposing that we can now interfere to prevent the invasion of Cuba and Porto Rico.

Nothing remains for us now, if, indeed, any thing can be done, but for *Congress* to interpose their authority in preventing the Executive from carrying *their views* into effect, and that interposition will not take place by confirming this mission. The true constitutional ground is, that the President has no right to pledge this nation, either as to our not permitting any foreign nation to take Cuba, or as to there being no ground to interfere to prevent its capture by the new Republics. I would change our position, at least so far as to declare, that the South

for information, made by the Senate on the 2d January, the President communicated a number of documents, some of which touched this subject. Among them, a letter from Mr. Clay to Mr. Middleton, dated 26th December, 1825, and which *has not been communicated to the House of Representatives*. That letter, among other important matters, contains the very remarkable passage above quoted, showing that our Government had taken the ground that *we could not interfere* to prevent the invasion of these islands by the Spanish American States, while on the other hand we had determined "not to permit any European nation, except Spain, to take them, under any circumstances whatever."

This passage, connected with the two others above quoted, from Mr. Clay's letter to Mr. Salazar, dated 20th December, 1825, was the foundation of the argument in the Senate, on this point.—*Note by Mr. H.*

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American States should not be permitted to take it, or to revolutionize it. But, as the question now presents itself as connected with this mission, we can accomplish no good, and may involve ourselves in difficulties, by counselling with those who are merely to settle the *mode* of co-operation in the invasion of Cuba and Porto Rico—a measure already decided on, and against which our Government have bound themselves not to interfere. It is in vain to say that the Executive has only disclaimed forcible interference. No other could be effectual. For a nation to disclaim the *ultima ratio*, is to surrender the point in dispute. There is no such disclaimer as to Europe. There, “we will not *permit*,” here, “we cannot forcibly interfere.” But we have gone further. We have stated expressly to the new States, that we only ask *delay*, and nothing but *delay*; and that to “a day certain,” and now *past*.

As to the other objects of this Congress, specified in the invitations, there is one answer to them all—they belong to *ordinary diplomacy*, and will be better and more speedily accomplished by our Ministers to these new States, than by going into a Congress of their deputies, whose attention must be chiefly engrossed by belligerent operations and local objects.

It only remains for me to notice the additional subjects specified by the President. He considers this mission necessary to prevent the new States from granting *special favors* to Spain and to each other. The treaties now submitted to us show, that these States have determined not to grant any privileges to Spain; and with respect to each other, we have already formed treaties with some of them in terms of the most perfect reciprocity, and with the only State with which we have had the least difficulty (Mexico) our latest accounts leave no doubt of their being speedily removed.

The President next tells us that it is important to establish the principles and *restrictions of reason on the extent of blockade*—but surely, sir, these and similar objects are to be attained by treaties negotiated in the ordinary way. They require no such extraordinary and questionable proceeding as a mission to this Congress.

We are next informed by the President, that it will be one of our objects to inculcate on the new States the *principles of religious liberty*.\*

\* On the subject of RELIGION, the President was understood, in the Senate, to recommend an attempt to alter the constitution of the new States on that point; but in his Message to the House of Representatives, he limits the object to the obtaining for our citizens the right of worshipping according to their own consciences—a right which is secured to them in all the treaties already made with those States, and which it is presumed can, in the ordinary course of negotiations, be obtained from all of them. The following are the passages in the messages of the President to the two Houses, on this subject:

To the Senate, the President said:

“There is yet another subject upon which, *without entering into any treaty*, the moral influence of the United

and some hints are thrown out of an indirect influence that may be exerted over their councils. If, Mr. President, it is against the spirit of our constitution to interfere in any way with the religion of our own people, I should conclude it must be altogether foreign to our policy to interfere with the religion of other nations. We both believe ourselves to be right, and I know of no power but that of the Almighty which can decide between us. Besides, sir, is it not obvious that any attempt to acquire influence over the councils, or to regulate the religious policy of the new States, must have a tendency to interrupt the friendly relations now existing between us, in the cultivation of which, the President assures us, he found the last and decisive inducement for accepting the invitation? Nothing to my mind can be clearer than that this mission must either terminate in an idle ceremony, or our Ministers will deeply wound the sensibilities of the new States; unless, indeed, they shall be authorized to enter into stipulations inconsistent with our neutrality and fatal to our interests. Look at the questions to be submitted to their consideration. On every one of them our deputies must refuse to act, or, by acting, commit the country.

I have given to this subject, Mr. President, the most dispassionate consideration, and I am free to confess, that, whether I consider the measure itself, the form of the invitation, or the course which has been pursued in relation to it, my mind is filled with the most unqualified astonishment. That the President should have committed himself, committed us, and committed the nation; and that the question should have been brought before us, will form, it appears to me, a curious page in the history of this country, which will, hereafter, be referred to with peculiar interest.

Mr. ROBBINS, of Rhode Island, said the hon-

States may, perhaps, be exerted with beneficial consequences at such a meeting—the *advancement of religious liberty*. Some of the Southern nations are, even yet, so far under the dominion of prejudice, that they have *incorporated*, with their political *constitutions*, an exclusive church, without toleration of any other than the dominant sect. The *abandonment of this last badge of religious bigotry* and oppression, may be pressed more effectually by the united exertions of those who concur in the principles of freedom of conscience, upon those who are yet to be convinced of their justice and wisdom, than by the solitary efforts of a Minister to any one of the separate Governments.”

To the House of Representatives, he says:

“And lastly, the Congress of Panama is believed to present a fair occasion for urging upon all the new nations of the South, the just and liberal principles of religious liberty. Not by any interference whatever in their internal concerns, but by *claiming for our citizens, whose occupations or interests may call them to occasional residence in their territories, the inestimable privilege of worshipping their Creator according to the dictates of their own consciences*. This privilege, sanctioned by the customary law of nations, and secured by treaty stipulations in numerous national compacts—secured even to our own citizens in the treaties with Colombia, and with the Federation of Central America—is yet to be obtained in the other South American States and Mexico. Existing prejudices are still struggling against it, which may, perhaps, be more successfully combated at this general meeting, than at the separate seats of Government of each Republic.”—*Notes by Mr. H.*

orable gentleman from Tennessee (Mr. WHITE) called upon us (by us, I mean those who have not adopted the reasoning of the report) to show wherein the reasoning of the report was not conclusive; implying that we were either to do this, or to adopt the resolution; as the resolution was the necessary result of the reasoning, if that was conclusive. I do not agree that this is the necessary alternative: for, an argument may fail of convincing the mind, may be felt as very fallacious, and yet the mind be unable to detect its fallacy, and unable to expose that fallacy, either to itself or to others.

The report would persuade us that the destinies of Cuba and Porto Rico are somehow connected with this mission, or with this Congress: that their conquest is to be attempted by force; or their independence produced by their blacks being excited to revolt. This supposes—first, that these plans of conquest or revolution are contingent—depending upon the event of a conquest: if no Congress—then, not to be undertaken: if a Congress—then, to be undertaken. And stranger still is the further contingent depending on the event of a mission, or no mission; that the Congress, without this mission, will not undertake them: but, with this mission, will undertake them. It supposes these strange things: for if those plans—Congress or no Congress—mission or no mission—are resolved on, it is idle to urge that as an objection, which has no connection with either fact. Whether these plans of conquest or revolution are resolved on, or will be resolved on, or resolved against, we know not: but this we know—it is a question with which that Congress can have nothing to do. It is not within their commission: nor has their commission any reference to it. The powers of war and peace, and all other prerogatives of sovereignty, are expressly retained by the States. This Congress has no participation in them whatever. All their military—all their naval operations, whether for offence or defence, whether separate or confederate, are concerted and directed by the States themselves, independently of this Congress. This Congress has not the least particle of authority with regard to them. But if this body had delegated to it the military and naval concerns of the Confederacy, and the direction of their military and naval operations, as the report erroneously supposes, would not our remonstrances, made upon the spot, in that body and to that body, be likely to have some effect? Would not that be the very place where to exert our influence to prevent those attempts? And would it be prudent to forego the chances, and them the only favorable chances, of effecting so important an object to our country, as would be afforded by this mission? I think not. The honorable gentleman from South Carolina supposes, even then, our Minister, by going to the Congress, would compromise our neutrality with Spain. What, if he went there, among other things, for the express pur-

pose of preventing an attempt against the possessions of Spain? Would an office of friendship to her, be a breach of neutrality towards her? Would an effort to protect her islands from invasion, be an act of hostility towards her? Will the learned gentleman say, that such is the doctrine of the law of nations on the subject of neutrality? Upon re-examination and reflection, I am confident he will not.

It is evident, that our Government has labored with much anxiety to prevent these or any enterprises against the islands of Cuba and Porto Rico; has still that object much at heart, and is bent on preventing them, if possible. Yet the very measure which the Executive has proposed, among other things, to augment his influence with those nations, to be exerted if occasion should require, the report represents as a measure that may become the means of promoting the very evil he is striving to prevent. How can it be, unless the Executive shall change his views? Or, unless his Ministers counteract his views, and favor those enterprises? The honorable gentleman from Virginia, who portrayed to us the calamities which might follow on in the train of these events, to affect our fellow-citizens in the South—who exhibited those calamities in a manner so affecting to every heart—who transported us to that scene of horrors which he described, and made us even seem to hear the cries of death from the cradle of reposing infancy; even he is not more anxious than our Executive to prevent these enterprises against Cuba and Porto Rico. It is strange, that, agreeing with the Executive in object, you should so differ in your opinion of the means! It is strange, that you should judge the means, which he deems useful, not only not useful, but detrimental to your common object! The President proposes means. How can that gentleman think them useless? Were he himself in that Congress, and that Congress were to agitate the project of exciting the blacks of Cuba to revolt; and that gentleman were to represent the calamities of the measure to arise to his friends and their friends in North America; to renew the picture of those calamities, as he had represented them to us, would it have no effect? My life upon it, I was going to say, the project would be abandoned. I do not know the gentlemen proposed for this mission; but this I know, that if they possess his powers of statement, and his energy of description, or powers any way resembling them, that their mission cannot be useless to the true interests of this country.

The gentleman has represented us of the North as coldly insensible to the possible perils of those of the South; as looking with stoical indifference to those perils: and as not unfavorable to the projects that would increase them. I should be sorry to believe that there was any foundation for this opinion. They mistake, I think, a spirit which is very partial and limited, for the general spirit of the North.

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I know that there is a wild spirit of fanaticism existing in that country, but not peculiar to it; the offspring of a virtuous sensibility, but unenlightened and unregulated by reason: bigoted to its abstractions, and disposed to push them universally, regardless of those considerations which ought to modify and to limit them; that sees nothing in circumstances that ought to check or control them, circumstances that control every thing; and are not to be controlled; that, to realize these abstractions, would risk the overthrow of the order, together with the happiness of a whole society—including that of those who are the objects of its visionary benevolence. I know that this spirit is formidable, and to be feared; but this is not the spirit of the North; all reasonable and reflecting men there (as the gentleman from South Carolina did us the justice to admit) abjure this spirit. They are not to learn, that even the virtues themselves, when pushed to their ultimate extremes, cease to be virtues, and operate as vices; that every society must conform to its circumstances; that this is its law; and not the abstract rights of humanity in any imaginary state of nature. They know, that if two distinct people exist in the same society, equally numerous, or nearly so, that one must be subordinate to the other; that not only the well-being, but the very being of that society depends upon it; that, if they forcibly and suddenly were put into a state of equality, a struggle would instantly ensue to re-establish the former condition; that it must be re-established, or that the one or the other people must be extinguished. The supremacy of the one people and the subjection of the other, is the necessary condition of such a society; and any attempt forcibly and suddenly to change it, is to attempt to change the nature of things; and however benevolent in intention, is criminal in fact. The gentleman, then, is mistaken, if he supposes that we see with indifference any events that would threaten them with this danger; such, for instance, as those revolutions in the islands of Cuba and Porto Rico, which he has imagined, and which he deprecates so much and so justly. And if we do not sympathize in his fears, it is because we are persuaded that this measure, instead of leading to those revolutions, will have a contrary tendency; and is the best of all possible precautionary measures in our power to prevent them.

So much for this report. Let the honorable gentleman from Tennessee still say, if he will, that its reasoning is conclusive. The report says, that this mission will link our destinies with those of the Spanish American nations, and that the Congress at Panama will control both; I ask, is this proved? Is not the contrary made evident? The report says, that this mission will or may compromit our neutral relations; I ask, is this proved? Is not the contrary made evident? The report says, the mission may be unfavorable to our policy, of preventing the conquest or the revolutions of

the Islands of Cuba and Porto Rico; I ask, is this proved? Is not the contrary made evident?

The theory of our constitution charges the Executive with the care of our foreign relations, and of the public interests connected therewith; it supposes him intimately acquainted with all those interests, and therefore possessed of the means of forming a correct opinion of the measures conducive to their advancement. This opinion, though not binding as authority, is yet, I think, entitled to much weight, as well as to much respect, in our deliberations. We have the Executive opinion in this case, under circumstances that entitle it to peculiar consideration. The credit of the Government, in the estimation of all those nations, is in a degree connected with the adoption of this measure; and that estimation ought not, in my opinion, lightly to be forfeited, nor unnecessarily impaired. I hope, therefore, that the resolution reported by the committee will not be adopted.

Mr. WOODBURY, of New Hampshire, in addressing the Senate observed, that he owed some apology for the violation of an injunction of silence, which circumstances had imposed upon him, in respect to the merits of the proposed mission to Panama. He had, from the first perusal of the documents, entertained but one opinion concerning its probable danger and impolicy. The able report of the Committee on Foreign Affairs, against its expediency, remained unanswered. An early decision of the question seemed a favorite object with almost every member; and, therefore, he had supposed that little benefit would result from debate, until some gentleman of a different opinion about the mission should attempt to shake the premises or conclusions of that report. Nobody had made this attempt till the worthy member from Rhode Island, yesterday entered the field of argument. Such a version of the documents was then given and some such principles of action avowed, as tended to alarm my mind (said Mr. W.) about the accuracy of its previous convictions. Last evening, therefore, I devoted a few hours to the re-perusal of the President's confidential communications, under a fixed determination to renounce, as far as possible, every prepossession, and follow in my vote, whithersoever their facts and principles should direct. For, I must confess, that I never could acquiesce in the doctrine avowed by the ingenious gentleman before mentioned, that he was not obliged to vote for the resolution on your table, although unable to designate any error in the statements or reasonings of the report on which the resolution rests. Will he inform us why we are endowed with reason unless it is to be our guide in action? I must know him too well to believe, for a moment, he could intend to countenance the slavish position that we, of course, should vote against any resolution not conformable to Executive recommendation. But his mistake,

probably, consisted in this: Conclusions which affirm facts contrary to all our experience, as that no external matter exists, though we are hourly striking our feet and hands against external substances, may well be doubted, however ingenious the reasoning; because, the facts themselves being contradicted by indubitable testimony, there must be some error in the data or inferences leading to such conclusions. But the resolution, that it is not now expedient to send Ministers to Panama, is not pretended to affirm any fact thus contradicted. So, conclusions which prostrate all distinctions between virtue and vice, may well justify us in doubting some of the statements or reasoning which produce them; because they embody what is palpably contrary to the moral law written on the hearts of all. But no one pretends that the resolution now under consideration possesses such a character; and, consequently, like most propositions in legislation and politics, it must be assented to, unless some one can discover and describe a fallacy in the grounds upon which it has been vindicated.

But the origin, object, actual power, and essential character, of the Assembly at Panama—called by whatever name, or its members by whatever title—appear, in some degree, in the documents before us; and, far as may be, I admit, must be settled by the treaties which created it, by the correspondence of the States interested, and by the official declarations of our own Cabinet. And when my friend from South Carolina adverted to pamphlets, manifestoes, and reviews, upon this point, it was only to exhibit more in detail what is essentially disclosed in the confidential communications now before us.

In a consideration of this question, I have not been surprised to find, that different gentlemen should fall into the ancient mistake of the two Dervises, about the true color of a column painted, and seen differently on different sides of the column. Because an inquiry into the papers will show that, probably, this Congress will possess some powers only temporary, and some perpetual—some peaceful and some belligerent—some limited and some sovereign—and, viewed in this double capacity, amphibious, hermaphrodite, and not designed for either of the above purposes exclusively, many discrepancies of opinion may be reconciled, and the nature and consequences of the mission may be better understood.

I have been utterly astonished, that any gentleman could read these documents, and still contend that this was not a belligerent Congress. What! a Congress, originating with those engaged in war; confined for years, in its incipient stages, to those only who are engaged in war; to be convened within the territories of those engaged in war; and having for its main objects, as again and again repeated, the triumphant prosecution of that very war; and yet a Congress, in no degree belligerent, and perfectly safe for neutrals to unite in? To re-

move all questions on this point, I will furnish gentlemen with evidence, till the most sceptical ought, I think, to be satisfied. Thus, in the treaty with Ohili, (Art. 894, p. 28,) it is stipulated, that this Congress of Panama shall fix their respective contingents or quotas of "sea and land forces" during the present war with Spain; and shall form "a rallying point in common dangers." By the treaty with Peru, (Preamble and third Article, page 38,) the cardinal object of the league is said to be to "maintain in common the cause of their independence," and this Congress is agreed to be, as before, "a rallying point in their common dangers." The treaty with Mexico is similar, they being "confederate forever in peace and war," and this Congress their "point of union in common danger." By the treaty with Guatemala, their design is avowed to be "to identify their principles and interests in peace and war," (preamble, page 80,) "to repel any attack or invasion from the enemies of either," (2d Art.) and, further, "that the objects contemplated by the preceding articles may be carried into effect, the Republic of Colombia engages to aid the United Provinces of Central America with that amount of its disposable naval and land forces, which shall be determined by the Congress of Plenipotentiaries to be mentioned hereafter," &c., (Art. 3 and 4,) and which is afterwards mentioned as the Congress "at the Isthmus of Panama," (Art. 19.) I would respectfully inquire, if gentlemen can point me to a parallel in the records of history of a neutral joining with "confederate belligerents," in a Congress like this? As this point has been principally combated, I may be indulged in a little farther examination of the opinion which the parties themselves—who best understand their own affairs—have expressed in other documents, concerning the paramount belligerent object and character of this Congress.

The Government of Colombia was the prime mover in this "perpetual league," and in its "common council" in the great conflict; and since our present session commenced, her Vice President has officially announced, that "in Panama the Plenipotentiaries of the new States of America are assembling to ratify, in the most solemn manner, our common determination to *maintain and defend* our national liberty and independence against the attempts of *its enemies*." Is it, then, a mere occasional Congress of Ambassadors, with no belligerent views? When our old Congress convened for similar purposes, would any European neutral, if invited, have deemed it safe to form a component part of such a Congress?

But I will not tax your indulgence by pursuing these inquiries further, or I could ask in another view, whether our mere presence at such an assembly, knowing, beforehand, its hostile objects, and uniting with them on a hostile soil, though disclaiming to join beyond certain of their deliberations, and dividing those as you may, would not alone be likely to give a

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"political importance," (as Mr. Salazar calls it, page 8,) to those Spanish States, in their belligerent attitude, which might be construed into aid and comfort; and which if given by a subject to an enemy, whether amounting to treason or not, would subject him to troublesome scrutinies; and which when given by one State to another, cannot be very far from a violation of the spirit of neutrality. But I hasten to other considerations. All my remarks, thus far, have proceeded on the hypothesis, that our actual intentions, in joining this Congress, were in every respect commendable, were entirely pacific, and in no degree connected with "the prosecution of the present war," or, as Mr. Olaj again expresses it, (28th December, 1825, page 8,) "with councils for deliberating on the means of its further prosecution." Are all our intentions so, in point of fact? I trust we are not to be deceived by any chaff scattered over this subject by the wiles of foreign diplomacy, or to deceive ourselves by any general professions, and loose protestations, not warranted by our acts. Foreign powers cannot be thus blinded; nor can the American people long be hoodwinked in this way into any "pledges" or "secret" alliances of co-operation with other nations, in support of any newborn theories, or any experimental principles, not conformable to our ancient policy and our true interests.

I aver, then, that, by the documents before us, whatever may be the verbiage on either side as to neutrality, the real objects, as disclosed on the side of Spanish America, in alluring us to this Congress at Panama, is to involve us in the end in the prosecution of the present war. I will attempt to show that she either believes, or pretends, that we have already given a pledge to join her in its prosecution in a certain contingency; that she invited us to unite in the Congress till about the time when she professed to believe that contingency would soon happen; and that, in all her correspondence as to the objects of our attendance, she thrusts forward into the first rank the discussions as to the mode of redeeming that pledge, and of rendering effectual our "co-operation" with her upon that ground. I will attempt to show also, that a part of our Cabinet must thus understand her, and that if we now confirm this mission for such an object, we do, by the very mission itself, bind ourselves, in a certain contingency, to future hostilities, unless we are willing to be branded as mere boasters and brawlers, who do not intend, in the end, to redeem our plighted faith.

In support of these positions, Mr. Obregon, in his letter of November 8d, 1825, (page 4,) states as the reason for inviting us to the Congress of Panama, that, "in the meeting of it, it was thought proper, by the Government of the subscriber, that the United States of America, by means of their commissioners, should constitute and take part, as being so much interested in the first and principal object upon which the Congress would be engaged." What is that object? Let the same gentleman answer.

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"The resistance or opposition to the interference of any neutral nation in the question and war of independence between the new powers of the continent and Spain." He adds, that this subject "the late administration pointed out and characterized as being of general interest to the continent." He proceeds upon this point in language too explicit for misunderstanding: "The Government of the undersigned apprehends that, as the powers of America are of *accord as to resistance*, it behooves them to *discuss* the means of giving to that resistance *all possible forces* that the evil may be met, if it cannot be avoided; and the only means of accomplishing this object is by a *previous concert* as to the *mode in which each of them shall lend its co-operation*," &c. The opposition to colonization in America by the European powers, will be another of the questions which may be discussed, and which is in a like predicament with the foregoing. The two principal objects, therefore, which we are invited to discuss there, is the *peaceful* question of "resistance" to the interference of any other neutral nation in their present war; and of "resistance" "to colonization in America" by any European power; and there to settle "the means of giving to that resistance *all possible forces*,"—or, in other words, there to agree, by "a previous concert as to the mode in which each of them shall lend its co-operation." Co-operation! how, or when! Of course, by money, troops, or vessels of war, whenever Naples, for example, may choose to aid Spain in her present contest; or whenever Sweden, for instance, may choose to purchase from her Cuba or Porto Rico.

There is no mistake on this point, as to the gist or essence of the mission. I care not for any formal flourishes concerning neutrality. Nations look to deeds, not words. What are the deeds to be done there, and in pursuance of what is done there? Mr. Salazar, like Mr. Obregon, November 2d, 1825, (page 7,) says, "the manner in which all colonization of European powers on the American continent shall be *resisted*, and their interference in the present contest between Spain and her former colonies prevented, are other points of great interest" to be discussed by us at Panama. "Were it proper, an *eventual alliance*, in case these events should occur, which is within the range of possibilities, and the treaty, of which no use should be made until the *casus foderis* should happen to *remain secret*," &c., would be different means "to secure the same ends," &c. "The conferences held on this subject being *confidential*," &c. Are we then so readily to slide into the snares of artful diplomacy? And are we, by this mission, to form "an eventual alliance" to maintain principles which have never yet been avowed but by one department of our Government, and which alliance is to be kept "secret" from the people and States whom we represent? Is it to be locked up here as "confidential," till the *casus foderis* happens, and then our Government branded as perfidious,



unless they join in the war? What is a mere adoption of the mission, but an assent to this dangerous doctrine, that we are now pledged, and are willing to remain pledged, in certain events to take part in this foreign war—a war on the despotic principle of maintaining countries more remote from us than Europe itself, in a balance of power; a war on the reprobate principle—the principle contradicted by all the practice and professions of our early administrations—of interference in the internal concerns, transfers, colonizations, and controversies of other nations.

Nor is this view of the nature and tendency of these principles confined to the Spanish States. The Executive department of this Government must entertain similar notions, and are now virtually calling upon the other departments to oppose or reject them. The President himself merely speaks of "an agreement between all the parties represented at the meeting" at Panama on these points, (message, December 26, 1825.) But the Secretary of State to Mr. Poinsett, October 25, 1825, (page 57,) says, no longer than about three months ago, when an invasion by France, of the Island of Cuba, was believed at Mexico, the United Mexican Government promptly called on the Government of the United States, through you, to fulfill the memorable pledge of the President of the United States, in his message to Congress, of December, A. D. 1823; what they would have done, had the contingency happened, may be inferred from a despatch to the American Minister at Paris" &c. Then follows that despatch, dated October 25, 1825, in which he deliberately avows, that "we could not consent to the occupation of those islands by any other European power than Spain, *under any contingency whatever.*" The same sentiment is repeated to Mr. Middleton, December 26, 1825, (page 47,) "we cannot allow a transfer of the Island (of Cuba) to any European power." Has it indeed come to this? that we are to tell the Autocrat of fifty millions he has not the same right to take a transfer of Porto Rico, as we had to take a transfer of Florida? Is this republicanism, equal rights, and received national law; or is it some marvellous discovery of the present age? And, are we prepared, by this mission, to back up, by a war, the menace to France, that, in no contingency whatever, shall she be allowed to occupy Cuba, although she buy it of Spain by as fair and as honest a treaty as that by which we purchased Louisiana of France herself?

Are these the doctrines of the American Congress, or of the American people? or do they savor of the Holy Alliance? Permit me again to repeat, that there is no mistake on these points. We act with our eyes open, and with the naked principle, exhibited in so many different postures, and in such bold relief, that, if the mission is once sent to enter into measures to enforce it, the die is cast forever, unless we prove perfidious and treasonable when the contingency occurs. Mr. Poinsett, 28th Sep-

tember, 1825, (page 54,) removes all doubt on the other point also; because, he says, "the United States had pledged themselves *not to permit* any other power to interfere either with their (Spanish American) *independence or form of Government*; and that, as in the event of such an attempt being made by the powers of Europe, we should be compelled to take the most active and efficient part, and to *bear the brunt of the contest*, it was not just that we should be placed on a less favorable footing than the other Republics of America, whose existence we were ready to support at such hazards."

But the United States as a Government, have not yet pledged themselves to any such entangling and despotic principle, in respect to any other nation whatever. They have not yet agreed to "bear the brunt of the contest" in any foreign war; nor support, "at such hazards," "the independence or form of government" of any nation or State, except our own nation and those of the States composing our own confederacy. Any such "agreement" would violate the constitution, and plunge us into a vortex of new coalitions and confederacies, abhorrent to every feeling of our most venerated fathers. Avowals of such principles, whether made by Mr. Monroe or others, are very justly on one occasion, styled by the Secretary, "*uncalculating declarations.*"—(Letter to Mr. Poinsett, page 56.) But, after time to calculate and consider, let me ask, in the name of all which is sacred and holy, will gentlemen still pronounce a mission pacific, and safe, and expedient, whose confessed and leading object is to discuss "the means of giving" "all possible force" to our "co-operation" in such principles? and to settle the mode of that "co-operation" when we are called on "to bear the brunt of the contest"—to settle how many of our gallant sons are to find ignoble graves under the tropical sun of Guatemala, if some petty Hessian Prince should hire a regiment of infantry to Spain? or how many of our fearless seamen are to be sacrificed to prevent other nations from taking possession of Cuba or Porto Rico in the same manner we ourselves took possession of Louisiana and Florida?

Where, also, is the crisis—where the emergency to justify such an extraordinary measure? "Why quit our own, to stand on foreign ground?" Why join our fortunes in any case, much less in a useless war with powers of another origin—another tongue—another faith? Have we become incompetent to our self-defence? Are we in need of foreign "councils," and foreign "deliberations," to manage our own concerns? Or are we so moonstruck, or so little employed at home, as, in the eloquent language of our President on another occasion—when the sentiments expressed found a response in every patriot heart—as to wander abroad in search of foreign monsters to destroy? Speaking of America, and her foreign policy, he observed, "she has abstained from interference in the concerns of others, even when the conflict

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has been for principles to which she clings as to the last vital drop which visits the heart." "Whenever the standard and freedom of independence has been, or shall be unfurled, there will her heart, her benedictions and her prayers be. But she goes not abroad in search of monsters to destroy. She is the well-wisher to the freedom and independence of all. She is the champion and vindicator only of her own." —(Adams' Oration, 4th July, 1821.) This is the first time that the Legislative Department of our Government has ever been distinctly appealed to for its sanction to the new notions thus ably denounced by him; and if we now approve the Panama Congress, whose chief object is to enforce them, we at once adopt and approve the principle, that Spain has not, by such alliances as national law warrants, and as were formed on both sides in our own Revolution, any right to attempt to reconquer and recolonize South America; and further, that she has not, by such sales as national law warrants, and as we ourselves have partaken, any right to transfer Cuba or Porto Rico to any European power with whom she can agree upon the purchase money; and that these unprecedented and unjust positions we are willing to maintain at any sacrifice of blood and treasure.

Mr. WHITTE, of Tennessee, said, that, were he to be advised by his feelings, he should remain silent; but, when he reflected upon the relation in which he stood to the report now under consideration, a sense of duty compelled him to submit to the Senate, some of the views which his mind had taken of this subject.

The only question is, (said Mr. W.,) the *expediency* of the mission to Panama. The President has distinctly asked of us an opinion upon this question. (See his Message, page 1.)

Our advice is to be given as freemen not as slaves. In this course we serve the Executive, maintain the dignity and independence of the Senate, and promote the best interests of the United States. If the mission should not be advised, we give no cause of offence to the Spanish American States. The evidences heretofore given of our friendship for them, in acknowledging their independence, and interposing our good offices to effect it, ought to shield us against any suspicion of unfriendly feelings towards them at present. The President will likewise comply with the only promise made to those who have tendered the invitation, his acceptance of it having been *conditional*, "if the Senate advise," &c. (See document, page 10.)

The subject is then fairly before us, for the exercise of our best judgment, without a fear that any promise of the Executive will be violated, should the Senate disagree with him in opinion: but even if this were not so, we could not, without a shameful dereliction of duty, offer any thing, as our advice, but the result of our best judgment.

Mr. President, I object to sending Ministers for the purpose of discussing and coming to

any agreement or convention upon this subject. It is not true, as far as I am advised, that the United States stand pledged to take part in this war, in any event whatever. Nothing can bind us to go to war with any nation, but a declaration made in the proper form, and by the proper department of this Government. The Executive cannot declare war, but I admit he may pursue a course of policy which will justify other nations in making war upon us. Congress has taken no step, has done no act, has passed no law, by which we are bound to unite with these new States in their war of independence, upon any contingency whatever. The Executive had no power to bind the United States by any *pledge* he could give. But what has he done? The groundwork of this pretended pledge, it seems, is found in President Monroe's Message, of December, 1823. It contains no pledge—it is a general declaration to his own Congress, of the sentiment which would be felt if any neutral should interfere on the side of Spain. Notwithstanding that declaration the United States were still at liberty, consistent with their honor, to take part with the new States, or omit to do so, as the wisdom of Congress might judge best, when any neutral power did take part with Spain. This declaration had a good effect. Not wishing to give offence to the United States, it may have prevented some of the European States from taking part with Spain. The new States have had the full benefit of this declaration. Thus the matter appears to have rested, till the close of Mr. Monroe's administration. Since the new administration came into power, it seems that, upon the appearance of a French fleet in our seas, some of the new States called upon the Executive to redeem the pledge which had been given. Upon this application, in place of correcting the mistake upon this subject, it would appear from the documents with which we are furnished, the Administration admitted that which I do not see was the fact, that a pledge had been given, and directed Mr. Brown, our Minister in France, to ask an explanation, &c. Upon this point, however, I think we are still in the dark; we have no copy of the application from the new States, nor of our answer to them. These documents would have shown how far our new administration have gone towards compelling us to take part in this war. It is very singular that, after all the calls for information which the Senate have been compelled to make, upon this important business, there is still a want of documents that would probably be useful. But, if we are at liberty to judge from the correspondence between Mr. Poinsett and the Mexican Minister, and from Mr. Secretary's letter to Mr. Poinsett, it does really seem that the Executive has admitted to Mexico, that we have given a pledge, which we may be called on to redeem, whenever the contingency shall occur. Of this pledge the people of these States are yet uninformed. I feel persuaded they have no idea we stand pledged upon any

contingency to embark in the war with these new States, whether it may compete with our interest or not. This is an inadvertence which cannot be corrected too soon. If we send Ministers, and an agreement is entered into, then, indeed, will the United States be *pledged*. We now know the object—we see the predicament in which we are placed; and with this knowledge, if Congress can be induced to give its sanction to this measure, and this pledge of the Executive is refined into an agreement, by which the United States shall be bound to furnish men, money, ships, &c., in aid of the new States, whenever any power, now neutral, may choose to take part with Spain, then, indeed, shall I think this nation has given a pledge, one that it may cost us too much to redeem, when the *casus fœderis* shall happen.

Mr. President, I go one step farther and insist, if you do send Ministers, and they discuss this subject, and enter into the *proposed agreement*, so far as you have power over the matter, your neutrality is not only broken, but you are in a state of *war*, and that with any and every power that is *now* neutral, and may hereafter elect to take a part with Spain. This is a dilemma from which we cannot escape, without disgrace. Send Ministers, make the agreement—and the question of peace, or war, is not *with us*; and, at any moment afterwards any European, or even American nation can put you at war, whether it may suit your interest or not.

I object to sending Ministers for the discussion of any *such* subject, or for the accomplishment of any *such* object. Even if we believed that such a state of things would probably be produced, as to make it proper for us to take a part in this war, I would still be opposed to any agreement by which we will become bound to do so. It is impossible now to foresee what may best comport with the interest of the United States at any *subsequent* period; and they ought to be left *free* to act, unfettered by any agreement whatever, as their interest or honor may require, when some other power does actually interfere.

It is vain to say, we are not to take a part in any belligerent question; that our neutrality is not to be violated; that we are not to engage in any thing importing hostility to any other power; while this proposition is presented to us. One of the Ministers who gave the invitation classes the subjects to be discussed into *belligerent* and *peaceful*, and states that the United States are not expected to take any part in the *first*; but, in the last, they are, and, in *this class*, he specifies this very subject. Does this make it peaceful? Surely not. It is belligerent. I admit it is not an *absolute* stipulation to take part in the war, and, therefore, some may feel justified in saying it does not import hostility; yet, it is undoubtedly an agreement to take part upon the happening of a certain contingency. It will import hostility upon a certain condition, which contingency or con-

dition is not within the *control* of the United States.

But after the report of the committee had been made, the gentleman from New York thought it might be well to know in what spirit Spain had received the mediation of the Emperor of Russia, and he submitted a resolution asking information upon this point, from the President, and this resolution produced the information communicated by Mr. Everett to our Government. And how does it correspond with the complexion previously given to the case? It shows that the opinion entertained, that Spain would recognize the independence of the new States, was destitute of any plausible evidence to support it—that Spain is determined to persevere in the war, until these States are reduced to their former condition—that she expects a struggle in her behalf within these States themselves—that she will procure assistance either from France, or from some other European nation; and, finally, that, as these colonies are hers of right, if all other resources fail, the Supreme Being will miraculously interpose, and put her again in possession of those rights, attempted to be wrested from her improperly. To many, I believe I might say to all, it appeared strange that this correspondence should not have been communicated, when that from Mr. Middleton and Count Nesselrode was furnished, because the Secretary, in answer to the resolution which caused the transmission of that, says, it “opens a wide field, and might be made to embrace all the Foreign relations;” and yet, by some oversight, the information most important was entirely omitted. With this evidence before us, it would seem that he who will insist that there is even a probability that the Spanish King will speedily acknowledge the independence of these States, must be as incapable of reasoning correctly, as is that King himself.

So far as we have the means of judging, this war is to be continued, and it becomes a very important question to settle in our own minds the direction it will most probably take. It appears to me that, if we consult the documents before us, we can come to a satisfactory conclusion upon this point, so far, at least, as we are concerned. These new States are now struggling for their independence—infatuated Spain will not acknowledge it—they will very naturally recur to such measures as will be most likely to injure her, and thereby compel her to do that which, if reasonable, she would do without compulsion. They will be sure to strike where it can be done with most effect, where she will feel most sensibly. Look at the correspondence between the Secretary of State and Mr. Middleton, between Mr. Middleton and Count Nesselrode, and between Mr. Clay and the Ministers of Colombia and of Mexico, and say if you are not convinced they will strike Spain through her colonies in Cuba and Porto Rico. These colonies are convenient to the new States: they have expelled the enemy from their own

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Territory; they will probably stimulate a portion of the inhabitants of those islands to rebel, to declare themselves independent of Spain; and, by uniting their forces with those revolted subjects, endeavor to put down the Spanish authorities in those islands. What consequences are likely to flow from such a measure? Russia, probably, and France almost certainly, would then immediately take part *with Spain*, in the war. From the documents, we have evidence that they would have strong inducements to interpose immediately. It is their wish that Spain should retain her dominion over those islands, because then that *balance* would be kept up in the seas where those islands are situate, which those powers think ought to be preserved.

Mr. President: I pass to the next subject specified. It is to discuss and agree upon the means to be employed for the *entire abolition* of the *slave trade*. Of all subjects that could be thought of, none would be found more unfortunate than this. It was hoped, that, after rejecting the convention with Colombia upon this subject, the Senate would hear no more of it from foreigners. If slavery is an affliction, all the Southern and Western States have it, and with it, their peculiar modes of thinking upon all subjects connected with it. In these new States, some of them have put it down in their fundamental law, "that whoever owns a slave shall cease to be a citizen." Is it then fit that the United States should disturb the quiet of the Southern and Western States, by a discussion and agreement with the new States, upon any subject connected with slavery? I think not. Can it be the desire of any *prominent* politician in the United States, to divide us into parties upon the subject of *slavery*? I hope not. Let us then cease to talk of slavery in this House; let us cease to negotiate upon any subject connected with it. The United States have, by their own laws, put an end to the slave trade, so far as their citizens, or their vessels, are concerned in it—more than this, they ought not to attempt. Let other nations discharge their duty as well, and the slave trade, so called, will be abolished.

One word more upon this point, Mr. President, and I will dismiss it. If there be any gentlemen in the United States who seriously wish to see an end of slavery, let them cease talking and writing, to induce the Federal Government to take up the subject, because, by the course now pursued, by some, they are protracting a measure which they profess a wish to hasten the accomplishment of. Whenever the States, in which slavery exists, feel it as an evil *too intolerable*, move towards its removal at home, and apply, through their Legislatures, to this Government for aid to *abolish it*, then, and not *sooner*, we may discuss it within these walls.

4th. We are invited to attend and settle "the basis of our relations to Hayti, and others, that may be in the like circumstances," &c.

Will gentlemen tell us whether a Representa-

tive from Hayti is invited to attend this Congress? It appears to me that it will be very unfair to settle this question, where that Government is unrepresented. It is, therefore, most probable her Minister is to be there likewise. Reflect, Mr. President, upon the population of that country, and upon that of a portion of our own, as well as upon the peculiar modes of thinking in Spanish America, and then let honorable gentlemen say whether they think this will be a fit subject for discussion. It is a question which the American statesmen must settle for *themselves*, and by *themselves*. Our situation, in relation to this subject, is so peculiarly delicate, that I cannot suppose any real friend to the Union would propose that it should be settled at the Congress at Panama. The suggestion of such a project may be readily excused in a foreigner; but in an American citizen it would be highly inexcusable.

Mr. President: I have now made some remarks upon each of the subjects *specifically* mentioned in the invitations we have received, and have insisted that it is *unfit* we should take any part in their discussion; and that, if *fit*, it would be unwise in us to enter into any agreement or convention respecting them, and here the question very naturally presents itself: If we do accept these invitations, and send Ministers, will they not be considered *bound* to discuss, and decide upon each of these subjects? I respectfully submit that they will. An attention to the facts will, I think, inevitably lead to this conclusion. Last spring, these Ministers asked if the United States would accept an invitation, if formally given? The Secretary of State, by command, answers—"Specify the subjects to be discussed, the mode in which the Congress will be organized, and the manner of its action, and we will then give you an answer."

Under date of the 2d, 8d, and 14th of November last, these Ministers tender formal invitations, and specify *these* subjects, as a part of those in the discussion of which *we* are expected to take a part; and on the 30th of the same month, the Secretary of State accepts the invitation, *if the Senate will concur*, and gives no notice that any one of the subjects is considered, by the President, as unfit for us to discuss and agree upon.

Suppose, then, our Ministers to be appointed—when they arrive at Panama, will not those who gave the invitations consider that the United States have agreed to discuss and decide upon each of these questions in particular, and upon such others as the proceedings of the Congress may give rise to? If we object to the discussion of either of the specific propositions, will we not be told, Your Government asked us to specify the subjects, for the purpose of enabling it to determine whether they could send Ministers to take a part; we did specify them in our invitations, and when those invitations were accepted, you ought to have notified us that, in the discussion of some of these sub-

jects, you could take no part; as you did not do so, we consider you pledged to aid in deliberating upon each of them. What answer could we give to such an argument? None, that I can think of, unless one could be derived from the general statement of our Secretary, that we could not take part in any belligerent question. The reply would be immediately given—"The abolition of the slave trade," "the relations we shall bear to Hayti," &c., are surely peaceful, not belligerent questions; and the questions relating to colonization and to resistance, if any neutral power should take part with Spain, were specified by us as falling within the same class, to which you made no objection whatever; and, therefore, we were not at liberty to suppose your general declaration had any relation to either of them; and, if we had suspected you did not intend to take part with us in considering those subjects, we would, most surely, have given you no invitation whatever.

To this reply I know not what satisfactory answer we could give. I, therefore, consider, if we send Ministers, they will go *pledged* to discuss and decide upon each of these questions. Thus circumstanced, it would seem to me to be the only safe plan for us to abstain from advising the President that the mission is expedient.

Mr. J. S. JOHNSTON, of Louisiana, said: We have been invited by the Governments of Colombia, Mexico, and Guatemala, to send Ministers to the Congress of Panama. The President has expressed a willingness to accept the invitation, with the advice and consent of the Senate; and we are now to give that advice. The respect and courtesy which distinguish the intercourse of nations—which ought especially to belong to the existing relations with them—would seem to require that the invitation should be met in the amicable spirit in which it is offered, unless it involves a departure from our duty or our policy. But I do not place the argument on that ground. There are objects of great and pressing concern to this country, and of deep and vital interest to that portion which I represent, which call for the immediate interposition of this Government. I regret to differ with the Representatives of that interest here, with regard to the mode of obtaining our object; while there is no difference of opinion with regard to the extent of the evil or the magnitude of the danger. There are other objects, of a general nature, which recommend this mission to us, to which it will be my duty to advert in the course of my remarks.

It has been assumed in debate, that the acceptance will involve a violation of our neutrality, and that all the objects are either dangerous, inexpedient, or unnecessary. I mean to meet this argument fairly. The question turns upon it. I freely admit that, if, as it has been strongly urged, by both the gentlemen who preceded me, (Mr. WHITE and Mr. HAYNE,) this was a Confederacy of American States, of

which we should form a part; if this was a belligerent Congress, and we should sit in council with them, to deliberate on those belligerent questions, vote with them, and be bound by them, there is no doubt of the manner it would affect our neutrality, and the consequences to which it would lead. But, if these facts are not true, but assumed—if they are not warranted by the documents, but inferred—it will as clearly follow, that there is no ground for the argument, and the whole of the superstructure will fall with it; and to this issue I bring the debate.

A Confederacy, for certain specified objects, has been formed by the Spanish American States. It is expressly declared to be composed "of the States of America formerly Spanish"—"of the ci-devant Spanish American States." This Confederacy is already formed by mutual conventions, which are now before us; for objects peculiar to themselves. To this league we are not parties, even in contemplation. The purpose of it is foreign to us; we have no war; we are not threatened with invasion; we want no alliance; we require no rallying point; we have no motive to change our present happy and peaceful relations. Although we have recently formed treaties with each of them, there has been no such convention proposed to us; nor is it anywhere suggested, but in debate, that we are to form a part of the league. As we were not originally a part of the Confederacy, we could not now be admitted without a new compact, and without violating the commercial rights and interests of the parties under it. This compact could not be formed, certainly, without a treaty, which would require the ratification of this body. There is no provision for the admission of new States. The union is limited to those who had a common interest. We have been invited with peculiar caution and delicacy, not as a member of the family, but as a guest; not to a Congress of which we were a party, but as a friend and visitor; to afford them an opportunity of manifesting to us the sentiments of kindness and friendship with which they are animated.

These Spanish American States have been engaged in a war of Revolution. They have achieved their independence; all the force of Spain has been driven from the continent. But, as Spain refuses all terms with them, and may renew the war upon either, the most exposed or the most feeble; as she will concentrate all her power upon a given point; as the occupation of any position on the continent will form a basis of operations on which to act against all the rest; as it will become the rallying point of all her adherents, and enable them to prolong the war—it became necessary to unite for the common defence of all, and mutually to guarantee peace, security, and independence.

In such a compact it was not our duty, our policy, or inclination, to engage; and, accord-

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ingly, we find that no proposition was made to us to become a party, and all the communications speak with the most guarded precautions, and the most explicit avowals. To believe that they intended to unite us in their councils, or to draw us into their measures, would be to arrive at this conclusion, not only without evidence, but against all evidence, and in the face of the most solemn assurances. This alliance of Spanish American States is already formed. The parties that compose it, the principles on which it is based, the obligations it imposes, and the means to be employed, are fully set forth in the convention before us; to which I confidently refer.

But suppose we were to take part in the discussion of belligerent measures, what part should we take? It is our interest and our duty to keep Cuba as it is: a movement there would be dangerous to us. The Secretary of State has said, we desire to see Cuba remain as it is. The President has, on a memorable occasion, said: "We cannot view with indifference the interposition of any European nation." We should, therefore, advise them to husband their strength and resources—to secure what they have gained. We should dissuade them from striking at that island—a measure, perhaps, fatal to them, and injurious to us.

How, then, can we participate in any belligerent measure? or any act prejudicial to Spain? or any act inconsistent with our faith, our honor, or our neutrality?

But, if, contrary to all expectation, the character of this assembly, and our motives in sending this mission, should be misconceived, and beget suspicion, the President ought and would remove it, by amicable explanations.

Our conduct has been always distinguished by frankness and good faith. There is nothing in this affair to conceal—nothing doubtful—nothing that we cannot avow—as we have heretofore done every thing connected with these Republics, in the face of the world. Certainly, if we do not take part in this Congress, even in respect to its defensive alliance, and we make these friendly explanations, no nation will believe that we mean to take part, except to produce peace.

But, if the President was disposed to do wrong, and should make a treaty, (which is not even imagined,) it would not be binding. It must receive the sanction of the Senate, and if, in the language of the report, "the power possessed by the Senate, of withholding its assent, ought not to be regarded as a sufficient assurance against the possible and probable effects of the proposed measure," there is another and a double assurance, to wit: that the President and Senate cannot commit this country in a war—it requires "An act of Congress."

There is nothing peculiar in the present case. The President has, at all times, the power to commit the peace of this country, and involve us in hostilities, as far as he has power in

this case. To him is confided all intercourse with foreign nations. To his discretion and responsibility is intrusted all our delicate and difficult relations: all negotiations and all treaties are conducted and brought to issue by him. He speaks in the name and with the authority of this Government with all the powers of Europe. That confidence has never been deceived. The character, talent, and public virtue, which placed them in that high station, is the guarantee of their conduct. Their own fame, their love of country, make it their interest and their duty to cultivate peace, commerce, and honest friendship, with all nations: and all the motives of self-love and ambition conspire to ensure from them, as from us, a faithful discharge of the trust confided to them by the constitution and the country. But there must be confidence. No Government can exist without it. And this distrust and jealousy of the Executive will destroy all power to do good, and all power to act efficiently.

The whole of the argument which I have attempted to refute, is founded on the fact, that we are to form an alliance, to confederate with them, to make common cause. The answer is, there is not a fact to warrant the assumption; and not a man in America will believe that this Government had such a measure in view; and yet we hear that this is a measure involving the dignity and neutrality of the United States, the fundamental principles of the Union, and the peace and security of a great subdivision of the Confederacy.

I conclude that this meeting of diplomatic agents is for convenience and facility of action; that they are to act ministerially; and that, therefore, what is done will be done in the usual diplomatic form, by conventions: which, in that case, must be negotiated under instructions from the Executive, and be referred back to the Senate for ratification; and, if it was a legislative assembly, then we are not parties to it, nor members of it; nor has the Executive power to enter such a body—certainly not without a formal act of this Government—and if he did authorize such an intercourse, it would not be obligatory on us. So that all these dangers are imaginary, and conjured up to frighten and alarm.

Mr. President, much has been said about a pledge. It is now the policy to make an impression that some secret understanding has taken place; some unknown and mysterious arrangement, which the Government will now be bound, in honor and good faith, if this mission is sent, to carry into effect.

The gentleman from Tennessee inquires what this pledge is; and the gentleman from South Carolina intimates strongly that this Government has given a pledge. The declaration of the President admonished neutral nations not to interfere with Spain and her colonies. It was a distinct and positive enunciation of the views of this Government. It was supposed, at the time, to mean something. By some, it

has been termed a protest; by others a pledge; but more properly designated as the memorable declaration. No other or different assurance has been given to strengthen the connections with these new States. But admit there was: all motive to treat on that subject now has ceased; there is now no danger, or even expectation, that the contingency will ever happen; and if we cannot rely upon the assurance of the President, that no alliance will be formed, we may rely upon the fact that no pledge has been given, by the inference arising from the fact, that Mexico refused to place us on the footing of the most favored nations. If we had given the pledge to protect her independence, there would have existed no reason for the distinction taken between us and the other American States.

Mr. President: I shall draw the attention of the Senate now to the consideration of some of those subjects which I deem of public interest, which have been suggested as proper for discussion, by our Ministers at Panama. I am met here by a sweeping declaration of the committee in their report—"That they have not been able to discover, among the objects particularly designated, *a single subject*, concerning which the United States ought to enter into any negotiation with the States of America assembled at Panama;" and in the argument, they have been boldly denounced as either dangerous, inexpedient, or unnecessary, or improper. I trust I have shown that many of the dangers which were imagined, are groundless. That arising from being a member of this new Confederacy, which rendered the mission unconstitutional—that arising from the fear of contracting alliances, which would violate our neutrality—that arising from a supposed pledge to make common cause, which might involve us in war—that arising from the interference of neutral or allied powers of Europe in this contest, which might threaten our peaceful condition—these have been fully, I hope satisfactorily, explained.

Among the events of greatest magnitude, and most anxious concern to this country, is the future condition of Cuba. We know that Colombia and Mexico have long contemplated the independence of that island. It has probably been delayed by want of concert, and by our mediation to produce peace. But we now know that the fortune of that island is now to be settled. They have waited for a favorable moment to attack them with a certainty of success, by the greater forces which the alliance of all the sections of the South and Mexico will procure. The final decision is now to be made, and the combination of forces and plan of attack to be formed.

With regard to the effect of that mission upon us, there is no difference of opinion. It is deprecated by all, as equally dangerous to our peace and their safety. What, then, at such a crisis, becomes the duty of this Government? Send your Ministers instantly to this

Diplomatic Assembly, where this measure is maturing. Advise with them—remonstrate—menace them, if necessary, against a step so dangerous to us, and perhaps fatal to them. Urge them to be satisfied with what they have achieved—to establish their Governments—consolidate their Union—improve their resources. Guard them against the madness and folly of this enterprise. Warn them of the danger of provoking the allies to take part with Spain. Admonish them of their duty and obligation they owe to themselves, to us, and to all Europe—not to disturb the peace and repose of the world. Our advice will be respected, and the danger averted. The consequences of this event in Cuba have been depicted in lively colors, but not too highly drawn. There is no difference of opinion with regard to the consequences which must ensue.

The establishment of principles of a liberal commercial intercourse, is another subject well entitled to deliberate consultation with the Spanish American States. It is well known that an idea has prevailed among them of giving special favors to each other, and of discriminating between the commerce and navigation of the United States, and American States formerly Spanish. Mexico still adheres to the justice of this principle, and has refused to sign a treaty on the basis of equality and reciprocity, after a full discussion. The other States have adopted the principle of equality. But as treaties are temporary—as this great question is to be again discussed—and as a uniform system for all will be adopted—it seems of great moment to secure to our navigation the benefits of that extensive and increasing commerce. But the reference of this subject is opposed in the report, on a principle as new in diplomacy as it is novel in the practice of nations; and founded on refinements in liberality and disinterestedness, utterly incompatible with the rights and advantages which it is the duty of every Government to secure to its citizens.

With regard to the policy of mitigating the practice and laws of nations in maritime war, and of establishing the same rules that have obtained in other wars—to exempt non-combatants and private property from its operations, there can be but one opinion here. Such a modification of the public law on the ocean, would deprive war of most of its destructive and unhappy consequences; would cause the war now permitted against regular commerce and private rights, producing disorders, violence, and crimes, ruinous to one class by making them a prey to the needy and desperate adventurers, who rob and plunder by commission, and demoralizing in its influence on all—to cease to disgrace the code of civilized nations; and this object is worthy the profound attention of this Government, and of the enlightened age in which we live.

The condition of Hayti is another subject, not alluded to by the President, and only intended to be alluded to by Mr. Salazar.

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With regard to the relations with that country, no change is desired—none will take place here. It may be proper to express to the South American States, the unalterable opinion entertained here in regard to intercourse with them. It will have its due weight and influence in their councils, and, I hope, it will be effectual. The unadvised recognition of that island, and the public reception of their Ministers, will nearly sever our diplomatic intercourse, and bring about a separation and alienation, injurious to both. I deem it of the highest concern to the political connection of these countries, to remonstrate against a measure so justly offensive to us, and to make that remonstrance effectual.

I trust I have shown, that, if this mission is not due to courtesy, it is due to a just estimate of our essential interests. It is due to friendship, to peace, to commerce, to our principles; it can do no injury—it may do good—it will do good.

Mr. VAN BUREN, of New York, said: The subject before us presents a question entirely new. It is one, too, of intense interest, involving considerations which, when once fully understood, cannot fail to excite the deep solicitude of our constituents, and ought to fill us with proportionate anxiety. It has grieved me to hear it announced, on different occasions, and in various forms, that gentlemen had so definitively made up their minds as to render discussion unavailing. I venture to affirm, that a similar course has never been pursued in a deliberative assembly. Cases have occurred, where the sinister designs of a factious minority have been defeated by a refusal to reply to speeches made after a subject had been fully discussed, and with the sole view of embarrassing the operations of Government; but to commence the consideration of a great national measure with the declaration, on the part of its advocates, that it ought to be settled by a silent vote, is an occurrence, in the annals of legislation, which, as it now stands without precedent, will remain, I trust, forever, without imitation.

It is not for me to advise those with whom I differ in opinion: nor am I disposed to arrogate a privilege to which I have no claim. I will, however, with permission, and in all kindness, entreat gentlemen to re-consider the propriety of a course which cannot, I am persuaded, receive the sanction of their deliberate judgments. Let each determine for himself whether it will read well in the history of this measure, that its progress through this House has been marked by a circumstance of so extraordinary a character. Entertaining an entire confidence in the motives of gentlemen, I will still encourage the hope, that they will diffuse the light which has brought conviction to their minds; and, as far as practicable, divest themselves of all predetermination. This hope alone induces me to trespass, for a moment, on the time of the Senate.

Nothing can contribute more to a just decision of the question before us, than a correct understanding of what that question is. I will endeavor to state it.

A Congress of Deputies from several of the Spanish American States is to be held at the Isthmus of Panama. The objects, powers, and duties, of the Congress, are set forth in certain treaties, formed by those of whom the Congress will be composed.

The United States were not parties to these treaties; but, subsequently to their formation, it was thought advisable by some of the States, to invite us to join them. Foreseeing the difficulties which might prevent an acceptance of their invitation, and unwilling to impose the necessity of a refusal, these States, with a commendable delicacy, made an informal application to our Government, to know if it would be agreeable to it, that such an invitation should be given. On receiving this intimation, the President had before him the choice of one of several courses. If he believed that the attendance of an authorized agent of the United States at Panama, with suitable instructions, would be beneficial, it was competent for him to have sent a private agent, at the public expense, with proper credentials. If he had thought it more advisable, because more respectful, he might have directed our Ministers at Colombia and Mexico, or either of them, to repair to the proposed seat of the Congress, instructed to express the interest we take in the success and prosperity of the States there assembled; to explain to them the principles of our policy, and the reasons which dissuaded our Government from uniting in the Congress; and to communicate whatever else, in the opinion of the Executive, the interests of the United States required. Or he might have expressed his desire, that the invitation to the United States to be represented in the proposed Congress, should be given; and as far as his constitutional power extended, determined to accept it. He has chosen the latter; and if the Senate approve, and Congress make the necessary appropriation, his decision will of course supersede any other steps which might have been taken. But if the Senate do not approve, or Congress refuse the appropriation, either of the other measures may still be adopted. Their execution is within the constitutional competency of the Executive, and the contingent fund will supply the means. It will be seen, therefore, that the question is *not* whether measures shall be taken to avail ourselves of all attainable advantages from the Assembly of the Spanish American States, but whether they *shall be of the character, and in the form proposed*. That form is, to send a representation on the part of the United States, to the Congress of Panama, according to the invitation given to our Government, and its conditional acceptance. I cannot give my advice and consent to this measure; and in assigning the reasons for my dissent, I hope to be excused for



omitting to notice some of the topics so largely dwelt on in former debates, on the subject of Spanish American affairs; such as the geographical description and great extent of these States, the character of their inhabitants, moral, physical, and intellectual, the injustice of their first enslavement, the odious tyranny practised upon them for a succession of ages, and the cruelties inflicted by their unnatural mother during the war of independence. Subjects which, although they may at times have produced some of the finest effusions of genuine patriotism, have also not unfrequently been the theme of wild and enthusiastic, not to say frothy and unprofitable declamation. We have had enough of such essays.

I will not say that they have become stale, because I would not so speak of any honest efforts in the cause of public liberty. For the present, at least, they would be misdirected. The condition of things is changed. Affairs have advanced. The colonies, whose distressed condition has occasioned these strong appeals to our sympathies, are now of right, and in fact, free and sovereign States. Their independence has been deliberately recognized by us and other powers, in the face of the world; and, though not yet acknowledged by Spain, (or likely soon to be,) is held by as good a tenure, and stands, I hope, upon as firm a basis, as our own. They have severed the tie which bound them to the mother country; and, unlike ourselves, have achieved their liberation by their own unaided efforts. As they have thus won an honorable station among independent States, it becomes our imperative duty to treat with them as such. In our intercourse with them, as with all, it should be our first and highest concern to guard, with anxious solicitude, the peace and happiness of our own country; and, in the fulfilment of this duty, to reject every measure, however dazzling, which can have a tendency to put these great interests at hazard. Whether the measure now proposed will endanger those interests, or whether there is not reasonable ground to apprehend it, is the question. To this will my observations be directed, alike regardless of all extraneous excitement, and indifferent to the unmerited suspicion of being lukewarm in the cause of South American liberty.

The first points which naturally present themselves for our consideration, are the character of the Congress, and the limitations under which it is proposed that the United States should become a party. In the former are embraced the objects of the Assembly, present and future; the powers of the Deputies; its duration, whether temporary or permanent, and its manner of acting, whether legislative or diplomatic. In the latter are embraced the portion of the concerns of the Congress, in which the United States are invited to participate, and the manner of that participation. Upon some, if not all these points, it must be admitted we are without satisfactory information. But the fault,

if fault there be, in this particular, does not lie at our door. There was a time when the Executive required, as a condition precedent to the acceptance of the invitation, an adjustment of several preliminary points, such as "the subject to which the attention of Congress was to be directed;" the nature and form of the powers to be given to the diplomatic agents who were "to compose it, and the mode of its organization and action." But that condition was afterwards, and I cannot but think improvidently, dispensed with. When this subject was first laid before us, we were furnished with no evidence upon some of the points referred to, except the tittle that could be gleaned from the letters of invitation: it was not until the 10th of January, in compliance with the call of the Senate, of the 4th, that the treaties, in virtue of which the Congress is to be held, were sent to us. Sir, the inroads, which the insinuating, not to say, insidious influence of Executive authority has made upon the rights and privileges of this body, from which so much was expected by the framers of the constitution, are great indeed. This remark is not made with particular reference to the present Executive. The history of our Government for many years presents an unbroken series of similar encroachments. The relation in which the President stands to the Senate, when acting under the treaty-making power, is essentially different from the other relations prescribed by the constitution. He has Executive duties to discharge, in which the Legislature have no participation; duties which ordinarily commence, when theirs have terminated. Information in his possession, relating to that branch of his public duties, it is his right to communicate or withhold from Congress, as, in his opinion, may best subserve the public interest. By the constitution, also, the exclusive right of nomination to office is given to him, and the Senate are called on only, to approve, or disapprove. There, too, he acts distinct from us, and possesses a discretion, though perhaps more limited, with regard to the communication of information. But on the subject of treaties the case is evidently different. They are to be made "by and with the advice and consent of the Senate." Upon that subject every step, preliminary, as well as final, ought, in the spirit of the constitution, to be submitted to the Senate. The practice of conceding to the Executive the preliminary steps in a negotiation, first adopted from convenience and since acquiesced in from habit, is now considered by some as an unquestioned right. But in the early administration of the Government it was different. General Washington, pursuing the spirit of the constitution, before commencing any new negotiation, laid before the Senate the views of the Executive, the instructions proposed to be given to ministers, and all the information in his possession, and then asked the benefit of their council. He appears to have thought the information necessary to both should be viewed in all respects as the common property of both. But

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now, instead of those full and explicit communications, a portion only of the requisite information is sparingly doled out—just enough to satisfy the successive calls of the Senate; calls always made with reluctance, because considered by some as implying an unwillingness to communicate what may be desired. It will be recollected, that it was not until the 2d of February that the Senate obtained the information upon which it consented to act. It is not my intention to impute to the Executive a disposition to suppress any thing connected with this subject. I have no reason to believe that these views exist. It is to the practice itself, which he found on entering into office, that I have deemed this a proper opportunity to object, not without a hope that a remedy may be applied. It is known to every member of the Senate, that, from this cause on the subject before us, its deliberations have been embarrassed, and its action impeded.

Hoping to be excused from a digression not wholly irrelevant, I shall proceed to the discussion of the subject.

What is the character of the Congress of Panama, first, as it respects the Spanish American States, by whom it is constituted, and secondly, the footing on which our Representatives are to stand? Is it to be, as asserted by the gentleman from Rhode Island, a mere Diplomatic Council, held for convenience in negotiation, with power to make and receive proposals, but without authority to bind the represented States? or is it to be an efficient public body, the permanent organ of a confederation of free States, formed for great national purposes? In short, is it to be an *advising* or an *acting* body?

The treaties between the Republics of Colombia, and those of Peru, Chili, Mexico, and Guatemala, formed in the years 1822, 1823, and 1825, so far as they relate to the institution and character of the Congress, are alike. By these treaties, a permanent league and confederation, in peace and war, is established among the parties: containing guarantees of the territories of the respective States, and stipulating for contributions in ships, men, and money, for the common defence. In a word, they provide for the union and application of their joint means, for the purpose of promoting the general good of the Confederate States, reserving to each its sovereignty in whatever relates to its internal concerns, and certain portions of its foreign relations.

Now, for the purpose of simplifying the question, permit me to ask, can the two specific objects and duties of the Congress, viz: the *interpretation* of treaties, and the *umpirage* of all disputes and differences between the confederate States, be effected upon the limited construction now, for the first time, given to its powers; a construction resorted to, and enforced with much ingenuity, by the gentleman from Rhode Island, when the dangerous steps we are about to take are fully presented to his view? Upon further reflection, that gentleman cannot

fail to detect the fallacy of the reasoning, by which he has been induced to adopt a construction against the express letter of the treaties. He asks, where are the powers by which the Congress are to enforce its decisions? none are given; hence he infers that they are only authorized to *advise*, but not to *direct*. Permit me to ask the worthy gentleman to define the character of our Congress under the Articles of Confederation. Was that a mere diplomatic council—an advising power—a convention of diplomatists met to negotiate, but not to decide? It was a legislative body, acting to the extent of the powers conferred. If the gentleman will compare the treaties by which the Congress of Panama is established with our Articles of Confederation, he will perceive a striking similarity between them. Our "Congress was declared to be the last resort or appeal for all disputes or differences now subsisting, or that may, hereafter, arise, between two or more States, concerning boundary, jurisdiction, or any other cause whatever." Was any direct power conferred to enforce its decisions? Not at all. That Congress was left, as the Congress of Spanish American States is left, to the obligations resting on each of the confederate States, to abide by the decisions of a tribunal of their own creation, and to the known consequences of contumacy. Our Congress, it is true, had the express power to decide on peace or war. But was it clothed with the means of sustaining their decision? Was it not wholly dependent on the voluntary contributions of the States? The gentleman also refers to the stipulation contained in the treaties, securing "the exercise of the national sovereignty of each of the contracting parties, as well as to what regards their laws, and to the establishment and form of their respective Governments," &c., &c. By advertising to the Articles of our Confederation, he will again find a stipulation "that each State should retain its sovereignty, freedom and independence, and every power, jurisdiction and right," which was not expressly delegated to the United States. But, if he be correct in supposing that this Congress will be a mere diplomatic meeting, for the purpose of negotiating treaties in the usual form, and without power to bind any State, *except by its own consent*, whence the necessity of this reservation? Does he not perceive that the very fact of inserting the exception, on which he so confidently relies, overthrows the argument he attempts to sustain by it? It can require no argument or elucidation to establish the permanent character of the Congress; it has no limitation as to time in the treaties. It is to be the Congress of the confederation, and of course to last as long as the confederation endures. Such is the necessary result; and that such is the design of its founders, appears from the provision authorizing the removal of the seat of Government by the vote of a majority, if *ever* the casualties of war or any other cause, may render it advisable to do so. There is no express stipulation as to the

manner of acting by the Congress. Our Government required information upon this point, and afterwards, as I have already stated, consented to act without it. But that its decisions are to be governed by a majority, results from the propriety of that course, from the equality of representation, from the provision that such shall be the case in relation to the place of meeting, and the absence of any other provision in regard to the other concerns of the Congress. This view of the subject is confirmed by the letter from the Government Council of Peru, to the Government of Buenos Ayres, of the 2d of May last, urging a union in the arrangements of the Congress, in which, after stating that, if the world had to *elect a Capital*, "the Isthmus of Panama would be pointed out for that august destiny, placed as it is in the centre of the globe, looking on the one side to Asia, and on the other to Africa and Europe; that the Isthmus had been offered for *that purpose* by the Republic of Colombia; that it was at an equal distance from both extremities, and on that account, might serve as a provisional place for the *first Assembly of the Confederates*:" it is added, that, "in the first conference between the Plenipotentiaries, the *residence of the Assembly*, and its *powers*, may be settled in a solemn manner, by the *majority*, after which every thing will be arranged to our satisfaction."

Such, in my judgment, is a correct view of the first great question arising on the subject of the Panama mission. I will now ask the attention of the Senate to the next branch of the subject, viz: THE BUSINESS TO BE TRANSACTED at the Congress, and particularly that portion of it in which we have been invited to participate. Unless I greatly deceive myself, the difficulties will be found to multiply as we proceed in the discussion of the matters proposed to be acted upon, so far as the United States are concerned. There are those, which, in the view of the Spanish American States, as well as of our own Government, are of primary importance; and others of a secondary character, which although they would not have furnished adequate inducement for the invitation or acceptance, are still deemed worthy of consideration if our Ministers attend. *Of the former, stipulations on our part to make common cause with the Spanish American States, in the event of any European power assisting Spain to re-establish her dominion in Spanish America, and resistance to European Colonization on this continent*, stand in the front ground. But for these the United States would never have been invited to send a Representative to the Congress of Panama. But for these the presence of our deputies would cause embarrassment, instead of affording facilities to the confederate States. Never, in the course of the little experience which it has been my good or ill fortune to have had in public affairs, have I been more thoroughly disappointed as to the probable course of discussion upon any point, than I have been upon this. That our Ministers, or Commissioners, or deputies, or

whatever else they may be called, shall be fully empowered to enter into an agreement (in whatever form gentlemen may please)—first, that the United States upon the happening of the *casus fœderis*, the interference of any of the powers of Europe in the struggle between Spain and her revolted Colonies, shall make common cause with the latter in repelling such interference; and, secondly, that we shall resist, either jointly or separately, all attempts on the part of any European power to establish new colonies in this hemisphere, are matters so precisely enumerated, and so clearly concurred in by all parties, that I did not imagine either the views of our Government, or those of the Spanish American States, in regard to them, could be misunderstood by any honorable gentleman. Judge then of my surprise, to hear it denied from all quarters that such views are entertained by the Executive—to hear it announced that if there were grounds to believe that any such agreement was contemplated, there would be perfect unanimity in the Senate in checking in its birth, a design so adverse to the interests of this country. A state of things so unexpected, necessarily changes the course of discussion from an attempt to prove the impolicy of the contemplated measure, to the establishment of the position that such, in reality, are the views of the Executive. From the year 1818 to 1823, a sort of rivalry existed in this country between the President, (Mr. MONROE,) and a *quasi* opposition to his administration, on the subject of Spanish American affairs. On the one hand, the boldest steps were taken to impel the administration to the recognition of the independence of Spanish America, accompanied by unreserved censures on the imputed reluctance and timidity of the Government. This spirit was combated on the part of the administration, by ascribing their conduct to a prudent and circumspect policy, designed to effect the greatest good with the least possible hazard. Time will not permit the enumeration of the various acts of the contending parties on the political arena in reference to this matter: suffice it to say, that in 1823, Mr. MONROE determined to crown the measures of the Government upon this subject, by adopting a course in relation to it, which, while it rendered efficient service to the Spanish American cause, could not fail to secure to his administration the reputation of being its greatest patron. In pursuance of this policy, he, in his message of December, 1823, among other things, said—"We owe it, therefore, to candor, and to the amicable relations subsisting between the United States and those powers, [the powers of Europe,] to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere, as dangerous to our peace and safety. With the existing colonies or dependencies of any European powers, we have not interfered, and shall not interfere. But with the Governments who have declared their independence, and maintained it, and whose independence we have on great con-

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sideration and just principles acknowledged, we could not view any interposition, for the purpose of oppressing them, or controlling, in any manner, their destiny, by any European power, in any other light, than as the manifestation of an unfriendly disposition towards the United States, in the war between those new Governments and Spain. We declared our neutrality at the time of their recognition; and to this we have adhered, and shall continue to adhere, provided no change shall occur, which, in the judgment of the competent authorities of the Government, shall make a corresponding change on the part of the United States, indispensable to their security." And further, in the discussion with Russia, relative to the Northwestern coast of this continent, the occasion was embraced, "for asserting as a principle in which the rights and interests of the United States were involved, that the American continents, by the free and independent position which they had assumed and maintained, were thenceforward not to be considered as subjects for future colonization by any European power."

The character and effect which has been given, or attempted to be given, to these declarations, is full of instruction as to the probable consequences of similar acts at this day. To say *here* that they did not pledge the United States to any course, would be superfluous. There are few who require to be informed that no declaration of the Executive could have that effect. But he had no such intention. He asserted (if you please) correct principles, but left us at liberty to act, or not, in enforcing them, as our interest or our policy might at the moment require: a question to be decided, like all similar questions, by determining whether, under all circumstances, it will best promote the honor and interest of the country to act or stand still. But how strangely have these declarations been distorted, not only by others, but our public functionaries themselves. In a letter from the Secretary of Foreign Affairs of the Republic of Colombia, to the Envoy of the Republic of Buenos Ayres, of the 6th March last, announcing the assent of the Republic of Peru to the propositions of the General Assembly of the American States at Panama, and requesting the concurrence of the Government of Buenos Ayres, it is stated, that among the objects of the Congress will be to take into consideration the means to give effect to the declaration of the President of the United States of America, in his message to the Congress last year, concerning the means to prostrate any ulterior design of colonization upon this continent, by the powers of Europe, and resist all interference in our domestic concerns."

In the letter of invitation from the Mexican Minister, Mr. Obregon, of the 25th of November last, he says, the "Government of the subscriber never supposed nor desired that the United States would take part in the Congress about to be held, in other matters, than those which, from *their nature* and importance, the late administration pointed out as being of general in-

terest to the continent; for which reason, one of the subjects which will occupy the attention of the Congress, will be the *resistance or opposition to the interference of any neutral nation in the question and war of independence between the new powers of the continent and Spain*. The Government of the undersigned apprehends that, as the powers of America, *are of accord* as to resistance, it behooves them to discuss the *means* of giving to that resistance, all possible force, that the evil may be met if it cannot be avoided; and the only means of accomplishing this object is by a previous *concert* as to the mode in which each of them shall lend its co-operation," &c.

"The opposition to colonization is in the like predicament with the foregoing."\*

Having thus specified the objects of deliberation, he invites our Government to send "*Representatives*" to the Congress of Panama, with authorities as aforesaid, and with *express instructions upon the two principal questions*.

Mr. Salazar, the Colombian Minister, in his letter of invitation of the 2d November last, thus expresses himself upon the topics referred to: "The *manner* in which all colonization of European powers on the American continent, shall be resisted, and *their interference in the present contest between Spain and her former colonies prevented*, are other points of great interest. Were it proper, an eventual alliance, in case these events should occur, which is within the range of possibilities, and the treaty, of which no use should be made until the *casus fœderis* should happen, to remain secret; or, if this should seem premature, a *convention so anticipated* would be different means to secure the same end, of preventing foreign influence. This is a matter of immediate utility to the American States that are at war with Spain, and is in accordance with the repeated declarations of the *Cabinet of Washington*."

Mr. Canas, the Minister of the Republic of Central America says, that, "as Europe has formed a *Continental system*, and held a Congress whenever questions affecting its interests were to be discussed, America should have a system for itself, and assemble by its *Representatives in Cortes*, when circumstances of necessity and great importance should demand it.

The views entertained by those Governments as to the condition of the United States in relation to its obligation to resist any attempts on the part of Europe upon the two subjects referred to, appears still more clearly from the fact stated by our Secretary of State, (Mr. Clay,) that when in the course of last summer, an invasion of the island of Cuba was apprehended, from the appearance of a French fleet in our

\* "Most of the new American Republics have declared their entire assent to them, and they now propose, among the subjects of consultation at Panama, to take into consideration the means of making effectual the assertion of that principle, (resistance to European colonization,) as well as the means of *resisting interference from abroad with the domestic concerns of the American Government*."—President's Message to the House of Representatives.

waters, we were promptly called on, by the Government of Mexico, to fulfil the alleged *pledge* of Mr. MONROE, in his message of December, 1823. Such are the views and expectations of the Spanish American States, in inviting us to the Congress of Panama.

Permit me now to show how far these extravagant pretensions have been encouraged, countenanced, and recognized by our own Government. I confess, sir, that I approach this part of the subject with regret and disappointment. If I know my heart, it harbors no inclination to view either this or any measure of the Government, with any other feelings than those of liberality and indulgence. But if there be here no cause for censure, I am under the influence of the grossest delusion.

Mr. President: Consider for a moment, the entire coincidence between the language expressed abroad by Mr. Poinsett, our Minister, and at home, by Mr. Clay, the responsible organ of the Government, and if you do not concur with me in thinking it amounts to a recognition of the pledge on the part of the Government, of the character claimed by the Spanish American States, and an avowal of our readiness to redeem it, I will hereafter distrust the clearest deductions of my understanding. Had the opinion of the Executive been different, the language of our Government, instead of declaring what we would have done, "had the contingency happened," would have been, what it ought to have been, an explicit disavowal of all obligation on the part of the United States to take any other part in any state of things, than that which the interests of the country might be supposed to require. But if a doubt could exist as to the views of the Executive, it would be dispelled by a reference to the invitations and letters of acceptance, especially when connected with the subjects referred to. In the letters of invitation, the Mexican and Colombian Ministers specify the subjects which, in their view, are of "*general interest to the Continent*," viz: resistance to European interference—and colonization, and request that our Ministers should have express instructions upon these two "principal questions." Our Government, without questioning the specification thus given at their instance, in the letters of acceptance, say, their *Commissioners to the Congress of Panama* will be fully empowered upon all questions likely to arise in the Congress, on subjects in which the nations of America have a common interest. What those subjects are, had been stated by the parties inviting, with express reference to our explanations, and unequivocally assented to by us. The President in his message communicating the nominations, leaves the subject of European interference in the struggle between Spain and her former colonies, to the correspondence between the Secretary of State and the inviting Governments to which I have referred; but on the subject of colonization he contemplates an agreement between all the parties represented at the meeting, "that each will

guard, by its own means, against the establishment of any future European Colonies within its borders." If these two prominent points were not intended, by our Government, to be the subjects on which stipulations were to be entered into at the Congress, what was meant by the President, in his declaration to the Ministers of Mexico, and Colombia, that, in his opinion, "such a Congress might be highly useful in settling several important questions of public law, and in arranging other matters of *deep interest to the American Continent*?" And if it be, indeed, true, that the proposed mission is designed to be no more than a matter of compliment to our sister Republics, without subjecting the rights or duties of the United States to the decision of that Congress, then why the solicitude on the part of our Government, to adjust, previously, the powers to be given to the deputies, and the mode of its organization and action? But I forbear to multiply proofs upon this point. Had it not been for the strong manifestation of unwillingness, on the part of the Senate, to enter into any such agreement, I am strongly inclined to think no question would have been made respecting it. With these Governments above all others, it is both our duty and policy to observe the most scrupulous sincerity and good faith. With them, at least, we ought not to encourage expectations not intended to be realized—a course alike reprehensible in principle, and ruinous in its effects. It is, then, the design of the Executive to enter into an agreement at the Congress, (it is not material for the present in what form,) that if the powers of Europe make common cause with Spain, or otherwise attempt the subjugation of Spanish America, we shall unite with the latter, and contribute our proportion to the means necessary to make resistance effectual; and further, that we shall bind ourselves, at that Congress, as to the manner in which we shall resist any attempts, by the European powers, to colonize any portion of this continent. The design has been fully, frankly, and explicitly stated to the Spanish American States, and to us. Is the Senate of the United States willing to sanction a measure of that description? I care not for the present whether it be by treaty or by act, decree, or ordinance of the Congress. Will you, in any shape or form, preliminary, or final, give to it your sanction? Upon this subject, at least, we have had "thoughts that breathe." In the confidence that I do not misunderstand them, I will venture to affirm that there is not a member on this floor, who will avow his willingness to enter into such a stipulation. If mistaken, I desire to be corrected. No—I am not. Whatever may be his views, no one, within these walls, is yet prepared to give his sanction to such a measure—a measure by which the peace of the country is to be exposed to a contingency beyond the control of our Government—by which the great question of peace or war will be taken from the Representatives of the peo-

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ple—by which, instead of retaining that freedom of action which we now possess, we shall bind ourselves, in a certain event, to pursue a certain course, whatever those, to whom the Government of the country may then have been committed, shall think the honor or interest of the country may require—by which, in the language of the Father of his Country, we “shall quit our own to stand on foreign ground.” No—thank Heaven—a policy so opposite to all the feelings of the American people; so adverse, as I firmly believe it to be, to its true interests, has no friends, at least no advocate on this floor. If, by any act of ours, we contribute to its adoption, it will be, (and I derive infinite satisfaction from the conviction,) through a mistaken belief that the measure of which I speak is not contemplated by the Executive.

I will now, Mr. President, call the attention of the Senate to another view of this subject, to a question of the gravest character, and most deeply affecting the dearest interests of the country—a question growing out of considerations which have heretofore occupied the best minds, and interested the purest hearts our country has produced: “WOULD IT BE WISE IN US TO CHANGE OUR ESTABLISHED POLICY UPON THE SUBJECT OF POLITICAL CONNECTIONS WITH FOREIGN STATES?” The President has said, that, “to form alliances,” is not among the motives of our attendance at the Congress. But what description of alliance does he mean? They are of various kinds, and of different extent. We are, at that Congress, to stipulate in some form, (and I care not in what,) that we will resist any attempt at colonization, by the powers of Europe, in this hemisphere, (or within our own borders if you please,) and that, in the event of any interference on their part, in the struggle between Spain and the Spanish American States, we will make common cause with the latter in resisting it. To this end we have been invited, and upon these points we have promised that our Ministers shall have *full powers*. We must do this, or the whole affair becomes empty pageantry; which, though it may be the offspring of personal ambition, will assuredly terminate in national disgrace. Call it an “alliance,” or whatever name you please, it is a *political connection*, at war with the established policy of our Government. And is this a light matter? Sir, when it is proposed to subvert a fundamental principle in our foreign policy, in the support of which we stand *alone* among all the nations of the earth—which, commencing with our Government, is endeared to the people, and upon whose deep foundations has been erected the magnificent superstructure of unequalled national prosperity—it surely becomes those intrusted with the management of affairs, to pause, and weigh, with scrupulous exactness, the importance of the step.

In the discussion of this subject, I shall first consider the general principle; then the grounds of the distinction attempted to be made between its application to the Spanish American States, and to those of Europe. At this moment the

United States (thanks to the wisdom of their early counsels) are unfettered. No Government has a right to demand our aid or interference in any of the changes in the condition of the world—come what may, we are now unembarrassed in our choice. Until lately, I had flattered myself that the acknowledged obligation on the part of our Government to maintain that condition, was as firmly fixed as its Republican character. I had the best reason to think so, because I knew it to be a principle in our public policy, which had for its support all that is instructive in experience, all that is venerable in authority. That authority is no less than the parting admonitions of the Father of his Country. The earnest, eloquent, and impressive appeals upon this subject, contained in his Farewell Address, are yet, and will, I trust, long remain, fresh in our recollections; nor were the sentiments he thus avowed mere speculative opinions, founded upon an abstract consideration of the subject. No! they were sentiments matured by reflection, and confirmed by actual experience of the practical results which had arisen from a connection of the character he so ardently and so justly deprecated. A reference to the history of that period will illustrate the fact, and is replete with instruction. During the war of our Revolution, we entered into an alliance with France, “the essential and direct end of which was, to maintain effectually the liberty, sovereignty, and independence, of the United States, absolute and unlimited, as well in matters of government as of commerce.” By the treaty of alliance, we, in consideration of the guarantee by France of the freedom and independence of the United States, undertook, on our part, to guarantee to France the possession she then had in America. The revolution in France involved that country in war with the principal powers of Europe. Her American possessions were brought in danger; and, among other things, claimed under the treaty of alliance, she called upon us for the fulfilment of our guarantee. At no period of our history has our Government been placed in a more humiliating and embarrassing situation. The signal benefits we had received from France were known to the world, and fully appreciated by our citizens. Upon the terms of the compact there could be no dispute. The consideration upon which we had entered into it, was of the most sacred character. But the danger of compliance was imminent, and prevailed over every other consideration. Reposing itself upon the great principle of *self-preservation*—a principle extending itself as well to nations as individuals—our Government refused to comply with its engagement; and General Washington issued his celebrated proclamation of neutrality. The grounds relied upon to justify the step, were, that our alliance was a *defensive* one only; that the war, on the part of France, was an *offensive* war, in which we were not obliged, by the law of nations, to take part; that the contest was, moreover, so unequal, and our means so inadequate, that, upon the principle

of self-preservation, we were justified in refusing to take part with our ally. It was not expected that France would acquiesce in the validity of the grounds thus taken. She did not. The loud solemn protests of her ministers are remembered; as, also, the measures resorted to, for the purpose of obtaining, indirectly, some of the advantages claimed from the alliance: such as fitting out vessels of war in our ports, and enlisting our citizens in her service. England remonstrated, made strong imputations of partiality against our Government—imputations founded on suspicions growing out of the known connection between us and France—and resorted to similar means to annoy her enemies and commit our neutrality. General Washington found it impossible to satisfy either party of the strict impartiality that governed our conduct. The result was war, in fact, with France, and many of the evils of war with England. She enforced against our commerce new and unjustifiable principles of public law on the subject of blockades and articles contraband of war. The sagacious mind of Washington, and the great men who enjoyed his confidence, traced the multiplied embarrassments of the country at that trying period, to the *treaty of alliance with France*. Had it not been for that, the task of preserving our neutrality would have been comparatively easy.

But I cannot consent to trespass long upon the time of the Senate in pushing the discussion of this point further, although various considerations, operating against the measure, press upon my mind. If it were proposed to form a connection with any European power, such as now designed with the Spanish American States, it is hoped and believed, that the measure would not meet with one approving voice—shall I say—on this floor? No, not in the country. But it has been supposed that the United States ought to pursue a different policy in respect to the States in this hemisphere. It is true Mr. MONROE, in his message, makes a distinction of this character, although he by no means carries it to the extent proposed. If he did, all that the distinction could derive from that circumstance, would be, the weight of his opinion, always considerable, but never decisive. The question still recurs, is the distinction founded in principle and policy? If it be, it must arise from one of two reasons: either the *character* of the Governments of the Spanish American States, or their *local situation*; or, perhaps, from both. The United States have hailed the emancipation of those States with satisfaction; they have our best wishes for the perpetuity of their freedom. So far as we could go to aid them in the establishment of their independence, without endangering the peace, or embarrassing the relations of our country, we have gone. More than that ought not to be asked. Nor has it. Sensible of the embarrassments which their invitation might produce, they declined to proffer it until advised that we desired to receive it. Next to being right, it is

important to Governments, as well as individuals, to be consistent. Has the character of these Governments been the principle upon which we have hitherto acted in relation to those States? It has not—Mexico and Brazil were the last to shake off their dependence on foreign authority. They were among the first whose independence we acknowledged. Mexico was, at the period of its acknowledgment, under the dominion of the Emperor Iturbide, and Brazil of its Emperor, Don Pedro. As a special compliment to the Emperor of Mexico, we sent, or rather intended to send, to his *Court*, one of the most distinguished men of the nation, (General JACKSON.) At the Court of the Emperor Don Pedro, we have our Minister; whilst in the Republic of Peru—the power with which the first of the treaties, in virtue of which the Congress of Panama is to be held, was concluded—we have not yet been represented. Do our principles admit that we should adopt the measure proposed with such reference, and upon such grounds? What are those principles? That man is capable of self government; that the people of every country should be left to the free selection of such form of government as they think best adapted to their situation, and to change it as their interests, in their own judgments, may seem to require. Wherein consists our objections to the Holy Alliance? Because they confederate to maintain governments similar to their own, by force of arms, instead of the force of reason, and the will of the governed. If we, too, confederate to sustain, by the same means, governments similar to our own, wherein consists the difference, except the superiority of our cause? What is their avowed motive? *Self-preservation and the peace of Europe*. What would be ours? *Self-preservation and the peace of America*. I wish to be understood. I detest, as much as any man, the principles of the Holy Alliance. I yield to no man in my anxious wishes for the success of the Spanish American States. I will go as far as I think any American citizen ought to go, to secure to them the blessings of free government. I commend the solicitude which has been manifested by our Government upon this subject, and have, of course, no desire to discourage it. But I am against all alliances, against all armed confederacies, or confederacies of any sort. I care not how specious, or how disguised; come in what shape they may, I oppose them. The States in question have the power and the means, if united and true to their principles, to resist any force that Europe can send against them. It is only by being recreant to the principles upon which their Revolution is founded; by suffering foreign influence to distract and divide them; that their independence can be endangered. But, happen what may, our course should be left to our choice, whenever occasion for acting shall occur. If, in the course of events, designs shall be manifested, or steps taken in this hemisphere by any foreign power, which so far affect our interest or our



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honor, as to make it necessary that we should arm in their defence, it will be done: there is no room to doubt it.

Mr. HOLMES, of Maine, said: two gentlemen, of transcendent talents, and great political experience, have advocated the measure. Wishing for light, I listened to them with intense interest; but to my utter disappointment, they, so far from defining the character and objects of this Congress, disagreed as to both. With one it was not belligerent, because it was *seeking peace by arms* and managing a *defensive* war. With the other, it has no power to touch the political condition of Cuba—the principal subject in which we can have any interest. And yet this gentleman would send Ministers to *prevent* their doing, what, he says, they have no power to do; just as the President would send them to prevent the Spanish American nations from conceding to Spain any commercial privileges, as the price of their independence, when, by their treaties before us, they have jointly, and severally, and solemnly, stipulated that they will *make no such concessions*.

The proposition is to send deputies of some character to a Congress at Panama. The questions I shall put, and in which I have in substance been preceded by the gentleman from South Carolina, (Mr. HAYNE,) are these: What is this Congress? What are its objects and powers? Have we any coincident objects and powers which render a mission *necessary* and *proper*? In these questions is involved the whole inquiry; they embrace the whole subject, and yet they have been deemed but "preliminary points."

Instead of recurring to the opinion of the President, or of the Spanish American Ministers, it is safest to go to the foundation, the *constitution* of this Congress. Whatever we might suppose or their ministers might imagine, it is very certain that the Deputies there must be limited in the exercise of their powers to the compacts which gave birth to the Congress. We have before us four treaties, in all which the Republic of Colombia is a party: one of the 6th July, 1822, with Peru; one of the 12th July, 1823, with Chili; another of the 15th March last, with Guatemala; and the other of 20th September following, with Mexico. They are termed "compacts of perpetual union, league, and Confederation." In some respects they differ from each other. In that with Peru, the *quota* or contingent of troops for mutual defence is stipulated, and they are to "maintain in common the cause of independence." In one, they are to "identify their principles in peace and in war;" and in another, their agreement is against "whatever may menace the security of their independence and liberty, affect their interests, and disturb their peace;" and they unite in whatever will "assure the mutual prosperity, harmony, and good intelligence," with each other; and there is in some a provision in regard to boundaries. Excepting these discrepancies they concur. Their compacts are *perpetual*—they are offensive and defensive; each

may repel an invasion of the other, observing the laws of the invaded territory; insurrections are to be mutually suppressed; privileges and immunities of commerce and citizenship are to be equal, and State sovereignty is secured; indemnity to Spain as the price of independence, and a separate peace, are prohibited, and the Confederation is limited to the American nations "formerly Spanish."

To secure these objects, a *Congress* is instituted, to consist of two Deputies from each of the parties, with certain delegated and defined powers; to ordain and establish the proportion or contingent to be furnished for the common defence; to be a council on great occasions or in great conflicts; to form a rallying point in case of danger; to be an interpreter of treaties, to act as umpires in case of disputes, and to establish intimate relations between the parties. Now, sir, whether these grants confer Legislative, Executive, Judicial, or Diplomatic powers, any, or all, it is certain that this Congress is made as *perpetual* as any Government can be made. Its model is our articles of confederation of 1778; and the slightest comparison will convince any one that this was the identical instrument from which this Congress was constituted. They have, as near as possible, taken the *words*. Theirs are compacts of "perpetual union, league, and confederation;" ours, "articles of Confederation and perpetual union;" but, by recurring to the third article, you will see ours are called "a firm *league* of friendship"—each, then, is perpetual, both secure State sovereignty, provide equal privileges and immunities of commerce and citizenship, fix the quota or contingent for the common defence, are offensive and defensive, umpires in case of differences, prohibit a separate peace, and establish the rule by which new parties are to be admitted into the league.

It is but poor consolation to be answered that nothing definitive can be done there, and treaties made cannot become the supreme law of the land, until ratified by the President and Senate. How many questions may be determined by negotiation which the House of Representatives can never reach?—where no appropriation is necessary? Find a nation whose views of legislation are coincident with yours, and almost every municipal law, whether federal or local, may be modified by the President and Senate, in spite of Congress or the State Governments. The laws of devise, primogeniture, entailments, &c., may be established by treaty, made by the *Executive* power, which are to be the supreme law of the land, and to ride over and trample down all laws of Congress, and of the States.

To become parties to a treaty-making or a treaty-originating Congress, of unlimited duration, is a new and extraordinary step. It becomes more dangerous from our practice under the constitution, which, in my view, is a perversion of its spirit. The President, with the advice and consent of two-thirds of the Senate, is to *make* treaties. The power of *making* is



taken away, and nothing But that of *ratifying* is left to the Senate. A new power unknown to the constitution, is sprung up, termed a "Cabinet"—instructions to Ministers, the first step of negotiation, are never submitted to us; these are discussed and agreed on in "the Cabinet," and, with these, and probably with the project or draft of a treaty, the Minister is despatched to *make* "supreme laws of the land," which it is extremely embarrassing and invidious for the Senate to reject. If it be true, as the gentleman from Rhode Island has told us, that this is a diplomatic Congress, and is of perpetual duration, it is alarming indeed.

But I hope and trust the case is not quite so bad as he makes it. It seems to me that no power of diplomacy can be exercised—no such power is granted—"National Sovereignty" is reserved, and is not to be interrupted "with respect to their relations with foreign nations," and making treaties is specially reserved to such power by its constitution. And it is, moreover, inconsistent with every principle of free government, that the makers of treaties should be the expounders or "interpreters"—that Legislatures should interpret the laws which they shall have enacted. The powers granted are, therefore, of another order, and they are Legislative, Executive, and Judicial. In the exercise of any of these, can we, or ought we, to participate? As *Ministers* they have no power to receive our delegates—as *Ministers* you have no power to send them. An Ambassador, or public Minister carries your sovereignty with him. He is your Representative near the Government to which he is sent, and is under the protection of that Government, and to be protected according to your own laws. Here you send him to no Government authorized to receive him, or having the power to protect him. Besides, the powers granted to that Congress are to be exercised exclusively by the American nations "formerly," or "*ci-devant* Spanish." To admit us to vote, or even deliberate, would be as much a violation of the compact or constitution as for us to have admitted the Dutch or French Minister to take a part in the deliberations of Congress, under our Confederation. Neither can they be permitted to *hear* the discussions. From the nature of the powers granted, this Congress must be an organized body, governed by a presiding officer, and subjected to *rules*. Many of their deliberations must be of a belligerent character, and therefore secret. They must have the authority, and it would often become their duty, to impose secrecy, even by oath. Now can your members take such an oath? Suppose (a case most likely to occur) an invasion of Cuba should be there discussed, this measure your Ministers must oppose. Could they, without a violation of duty to their own Government, give an obligation of secrecy, and could they be admitted without that obligation? Your Ministers *Plenipotentiary* then, are to be nothing but lookers on, or listeners, and in that in which your in-

terest is most concerned, cannot be permitted to act in those characters. If the United States intend seriously to oppose an invasion of Cuba, they ought long since to have made known their determination fully and definitely to the Spanish American Ministers here.

But we will suppose these obstacles surmounted, and your deputies admitted in full communion. We are then first to discuss the contingent to be provided by each for the common defence. On this subject, Mr. Obregon is very explicit. We are to fulfil our *pledges* against European colonization, and interference of any of the powers of Europe, except Spain, against the independence of the Spanish Americans. This subject of colonization, which seems to be so involved in mystery that no mortal can clearly perceive its meaning, has been so well disposed of, by other gentlemen, that it would be indeed fruitless to bestow on it any further observations. The other *pledge* is more explicit. But, sir, as to pledges, allow me to say, once for all, that the President of these United States has no power whatever to pledge the people of this Union to any nation in any thing. And every declaration of his, made to the world, must be understood by other nations, not as a *pledge* of what we *must* do, but as an *opinion* of what we *will* do. Until Congress concur, or assent to a measure affecting our foreign relations, nothing is binding. Still, the Mexican Minister understands it differently, and intimates that, to fulfil the obligation there must be "a previous concert as to the mode in which each shall lend its co-operation." And Mr. Salazar recommends "an eventual alliance," to be kept *secret* until the *casus fœderis* occurs. If these Ministers are correct, we are already entangled, and, whether by "our own means," or by "previous concert" with them, we are bound to fulfil stipulations made by the late administration: and, however we might, at this time, deny the force of the late President's pledge, still, if we give our assent to this mission, for the purposes thus avowed, we are ever after foreclosed. One of the "precise questions" disclosed, then, is the *means* to be furnished by the United States, to prevent European colonization, or interference in American affairs, and the *manner* of furnishing the means, whether by *secret treaty* or otherwise. Yet the Executive informs us that we are "not to deliberate on any thing of a belligerent character, contract alliances, nor undertake with them any thing hostile to other nations." Now, these things are not to be done, and yet, if we accept the invitation to this Congress, we are bound to concur in the avowed objects. How will gentlemen reconcile these conflicting opinions?

But the greatest lure to us, is the thought of participating in "A COUNCIL ON GREAT OCCASIONS!" You know, sir, that Republics are never ambitious—they are always humble, forbearing and unassuming—their leading politicians are always as meek as Moses. Yet it seems, in this case, we are fascinated and im-

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flated with this "great occasion." My life for it, this is no scheme of the President—he is a cool, deliberating, calculating, penetrating, discriminating, reasoning sort of politician. It is a toy, yielded to the importunity of the Secretary of State. The President has no strong partialities for the Spanish Americans—Mr. Clay wanted a plaything, and the President, probably with reluctance, consented so far to gratify him, as to present the proposition to the Senate, hoping no doubt that we would reject it. Sir, who has been the leader of this crusade in favor of Spanish American liberty? Who, more than seven years ago, became their chief advocate, in the House of Representatives? Whose speeches have been translated and retranslated, and circulated throughout their vast dominions? Who has been toasted as the champion, and canonized as the Saint? Who, in fine, is to reap the reward? The Secretary well knows that public opinion has already made him their grand advocate and intercessor, and he will so manage it that, if there is to be any glory, it is to be his inheritance—if any disgrace, it is to be entailed on the President. No, sir, this is the magnificent scheme of the favorite—the genius, the master spirit of the *West*. I intend nothing invidious to my friends here, from that interesting section of the Union. I respect them much, I admire their frankness, intelligence and liberality; and even their extravagance has its apology. They occupy a vast, interesting country—they have aspiring forests, majestic rivers, sublime mountains. They look upon the scene, and contemplate the prospect before them; and the mind is enlarged, expanded, elevated, sublimated. But this scheme of the Secretary, in point of extravagance, transcends all imagination. All the nations of this vast continent are to be arrayed. Buenos Ayres, the Banda Oriental, Chili, and Peru, are to form the right; Colombia, Guatemala, and Mexico the centre; the United States the left, and Maine the extreme left. The *little* empire of Brazil, and the hordes of Canada and Nova Scotia, are probably to be disposed of; and then we can present one undivided front to Europe and Africa, and another to Asia and the Isles of India. And the conception and contemplation of this mighty achievement, posterity is to ascribe to the matchless spirit of the *West*!

Here I might stop, had not the President in his message, and the Spanish American Ministers, in their correspondence with us, pointed out other objects, not embraced within the limits of their constitutional compacts. As it appears to be the opinion of each, that objects, other than those confided to this Congress by these compacts, may be matters of consideration and decision, it is proper to examine them. The President, in his message, is of opinion that we may aid them by our experience, and instruct them in principles of religious freedom; and the gentleman from Louisiana speaks of the moral effect to be produced, and the dignity to be conferred. Thus, we are to depute Mr.

Sergeant and Mr. Anderson, in the double capacity of Ministers and Missionaries. Whether they are to have double outfits and salaries, we are not yet informed. Indeed, sir, I apprehend, from recent disclosures, they will think less of our experience than they have done, if not of our *sincerity*; and if we could send Ministers at all, it should be to relieve us from the thralldom in regard to the mediation of Russia. When the documents communicated were in reading, and I perceived from the letters of Mr. Middleton and Mr. Clay, that the Emperor Alexander had agreed to mediate with Spain, for the *recognition* of her colonies, I was inspired with admiration at, and gratitude for, such magnanimity—that the head of the holy Alliance, the defender and protector of the rights of Kings, should become a mediator in favor of Republics, was extraordinary and unexpected, and an indication of real greatness. I listened, therefore, with intense interest for his declaration to that effect. The letter of Count Nesselrode was read—this was a polite, but frank refusal. From the next despatch we expected to hear that the Emperor had changed his mind—but, this was all. [Here Mr. H. read Count Nesselrode's letter of 20th August, 1825.] I had previously learned that the condition, not the independence of the Spanish Americas, had been discussed in the European Congress; that the Mexican Legation had been ordered to leave Spain—that Government refusing to hear the subject of their independence even discussed, and with this information and this letter before him, how any man could have been led to believe that this document was an agreement of the Emperor to mediate for this recognition by Spain, was to me utterly astonishing. But it is more extraordinary still, if we suppose that the Secretary had, at the time of the first message, the papers from Mr. Everett, afterwards sent us. These go to establish, unequivocally, the determination of Russia not to mediate, and of Spain not to recognize the independence of her colonies, on any consideration. That Mr. Middleton should have been deceived, I could readily suppose; he is much more distinguished for his honesty and goodness of heart, than for his political or diplomatic wisdom or experience; and it is not singular that his wishes should get the better of his judgment. But how the adroit secretary could have thus deluded himself, is past conjecture. The stupid and infatuated Spanish monarch is firmly and confidently relying on Divine Providence to give him back his colonies, without any exertion of his own—that Providence, who cares, probably, less for him than for the "sparrow that falls to the ground," and who will interfere, if at all, "to break the rod of the oppressor and let the oppressed go free."

I need only call the recollection of gentlemen to Spanish history, to prove that this obstinacy and perseverance is characteristic of that nation. Portugal, after having been sixty years subject to Spain, in 1640 revolted, and

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under the Braganzas, drove the Spaniards from their country. You well recollect how long Spain struggled to reconquer that then gallant people; she persevered against reason, and hoped against hope. The United Provinces were subject to Spain. They were the carriers for all Europe; from Lisbon, the depot of the wealth of the East, and Cadiz, the depot of that of the West, they transported to, and supplied, all the north of Europe. Antwerp was the most commercial city in the world. In 1570, the Hollanders revolted. Spain was then to Europe what Russia is now. The power established by Charles the Fifth, was in its strength and vigor. These revolted provinces, however, maintained the struggle, under every disadvantage, but with wonderful success. In ten years after the first revolt, they were excluded from Lisbon by the subjugation of Portugal to Spain, and in five years after, their beautiful Antwerp was sacked and ruined by that monster the Duke of Parma; but amid these reverses and misfortunes, they maintained the war. Amsterdam rose on the ruins of Antwerp. Driven from Lisbon and Cadiz, they sought the commerce of the East and West Indies at its sources; and the colonies of Spain and Portugal, in the remotest parts of the world, felt their power, and were subjected by their arms. After a vindictive and cruel war of near forty years, Spain was compelled to agree to a truce for twelve years. The truce was violated before it had expired; the war was renewed; and Spain again experienced everywhere, disaster and defeat. Her rich galleons were captured; her fleets were defeated in repeated conflicts; her Armada was destroyed, even in the Downs; and, though beaten, weakened, humbled, and on the brink of ruin, it was not until the peace of Westphalia, in 1648, that she consented to acknowledge the independence of these Provinces. The character of Spain is not changed, and in modern times you have witnessed the same persevering obstinacy against one of the most powerful and successful conquerors the world ever saw. And with these facts before us, how comes it to pass that we are encouraging these Americans, that Spain is disposed to acknowledge their independence, and that, when her infatuated monarch says, emphatically, *No*, he undoubtedly means *Yes*? And what has been the effect of this delusive hope which we have inspired? The Spanish Americans have been deterred from striking Spain in her most vulnerable part, and the only one within striking distance, and Cuba and Porto Rico are so strengthened, that they may probably now bid defiance to the united efforts of the Spanish American nations. This is one of the blessed effects of officiously intermeddling in affairs of our neighbors. But this is not the only effect of this officious friendship. In pressing this hopeless intermediation of the Emperor Alexander we have dropped a word, which, if fairly understood by the crafty Nesselrode, may justly

give great offence to these *our friends*. We are, it seems, to use our influence "in defeating, as far as may be in our power, every interference against those islands in securing the rights of his Catholic Majesty constant and proper respect, and in maintaining the only state of things that can preserve a just balance of power in the sea of the Antilles."

The course we *have* pursued, and ought to pursue, in regard to Cuba, is a matter of much perplexity. A dark cloud hangs over that island, and bears a threatening aspect. Which way it will pass over, where it will burst, or whether it will burst at all, no mortal can predict. Suppose the worst—an insurrection of the slaves, a servile war—can you, ought you to interfere? Which side would you take? Against the insurgents? My life for it, you could not maintain such a war—public opinion would not sustain you. A war out of the limits of the United States, a foreign war, to reduce men to servitude! Not an arm and scarcely a voice north of the Potomac, would be raised in your behalf. An administration who should attempt it, would seal its own destruction. No, sir, the liberal and discreet politicians of the North, sympathize with their brethren of the slave-holding States. Our maxim is, that it is an evil, which *we* cannot remedy. The only relief we can give them, is to let them manage it *themselves*, and that any interference on our part will make it worse. But beyond this we will not go. To send our troops, the sons of freemen, to a foreign country, to be the victims of the sword and the pestilence, for the purpose of suppressing an insurrection of the slaves, is a measure against which we shall ever protest—to which we shall never submit. We could not if we would—the apostles of liberty, the advocates of universal emancipation would cry aloud, and denounce this war in favor of slavery! Their voices would be heard, even in the humble habitation of the slave, and you would soon find it necessary to withdraw your army to preserve peace at home. So much for the North. I now ask the gentlemen of the South whether, if it is only intended to *discuss* the condition of Cuba, Panama is the proper place. You have already said too much against emancipation. By provoking a discussion you increase the evil you attempt to remedy. On this subject your wisest policy is to say but little. But if you will speak, let it not be on the house top. To this extraordinary Congress the eyes of the world are turned. Its objects, its deliberations, its determinations, are matters of universal interest. Let it be known that the rights of the slaves of Cuba are to be discussed there, and every philanthropist and fanatic in Europe will be on the alert—their voices will be responded from the American continent—the blacks will take fire, and the scenes of St. Domingo will be re-acted at home. No, let me repeat, when you cannot see where to go, nor what to do, stand still and do nothing. And wherein is the justice of your

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interference? You go there as invited friends, and on a subject most of all important, you oppose them. So far as regards Spanish America, leave Cuba to its fate. These nations will, as they have told you, go in aid of the Creole population, and surely it would be a miserable aid indeed to let loose the slave upon his master. Your interference, in any way, will be an injury to them, if not a curse to your country.

And what good reason can induce you to unite in settling the political condition of Hayti? Are you not now satisfied with its condition? If your political relations are not sufficiently close, it is your own fault: for Hayti has always been solicitous for a closer union. You need not surely send to Panama to determine what are your own wishes. Nor need you fear what will be the determination of that Congress, in regard to that island. When France, as you had supposed, acknowledged its independence, you felt no alarm; and why should you fear if the Spanish Americans should do the same? But the gentleman from Louisiana insinuates, that, if the Haytiens should ever be represented at Washington, their Minister or agent must be a *white* man. Now, if it is really a question of sufficient importance, to determine whether he should be black, yellow, or white, Panama is the last place in the world where I should go to settle it. When our fresh and fair Ministers shall enter the hall of that Congress, and look round it on their associates, I apprehend that they will deem it invidious and indelicate to talk about *color*. If you or I, sir, had been selected for this mission, or some of my friends who sit around me, or some of those on the other side of the way, we might have discussed a question of *complexion* with a much better grace. But as it is, I am inclined to believe we had better leave it to the United States and Hayti to determine it themselves.

Mr. BERRIEN, of Georgia, addressed the Senate as follows:

Sir, the measure to which we are called, is distinguished by a novelty, which induces me to pause. So far as the project is disclosed, it is plainly injurious to the best interests of this people, while much of it is veiled from the view of the most scrutinizing inquiry. Clouds and darkness rest upon it. It comes, sir, in such a questionable shape, that I will speak to it. Under the guise of a just sensibility to the interests of the Spanish American Republics, it proposes to change the whole system of our foreign relations, by the mere exercise of the appointing power—to involve the interests of this Union in a foreign association, composed of States with whom we have no natural connection, and over whose councils we can exercise no efficient control.

More distinctly, sir—and in the first place. In a season of unexampled prosperity, which we have attained by a rapidity of march, to which history affords no parallel, which invites to no change in the general system of our foreign relations, “and least of all to such change as this

would bring us,” we are required to abandon the wise and salutary policy which has hitherto conducted us in safety, to form a political association with the Republics of Spanish America.

I should waste the time of the Senate, if I were to detain you by the formal proof of the fact, that the United States are at this moment in the enjoyment of an unexampled prosperity. I appeal to the Message of the President at the opening of the session, for the evidences of our prosperous and happy condition, of the flourishing state of our finances, of the increase of our commerce, our wealth, our population, and the extent of our territory; and for the proof that we are permitted to enjoy these bounties of Providence in peace and tranquillity; in peace with all the nations of the earth, in tranquillity among ourselves.

What are the duties which these considerations inculcate? I propose the question in sober sadness to the majority of this House. Thus situated, what is it that we owe to the Republic? Is it to embark in quest of novelty on the ocean of experiment—to yield ourselves to the visionary and fantastic schemes of political projectors—to the splendid but delusive suggestions of a wild and reckless ambition? Is it not rather to preserve, to cherish, to guard with more than vestal vigilance, that enlarged and liberal, but stable and self-dependent system of policy, which, by the blessing of God, has conducted us to our present happy and prosperous condition? What is that policy? Sir, it is the policy which guided the councils of WASHINGTON—which produced the celebrated proclamation of neutrality, a measure which saved us from the vortex of European contention—to which each successive administration has adhered with fidelity—which Washington himself thus emphatically announced—“The great rule of conduct for us, in regard to foreign nations, is, in extending our *commercial* relations, to have with them as little *political* connection as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. *Here let us stop.*”

The proposition which I am endeavoring to illustrate, asserts merely, that the proposed inission to Panama involves an abandonment of the policy by which this Confederation has hitherto been governed, at a time when, by a steady adherence to that policy, we are prosperous and happy. It is of the character of the measure in this view alone, that I speak at this moment. To the motives which are urged to induce its adoption, it will be my duty hereafter to advert. Here it is sufficient to recognize these facts, that the proposed association of American nations at Panama, is a *political* one, and that such an association is a departure from the settled policy of this Government. That such is the character of the association, is not denied by those who advocate the measure, is proclaimed in every page of the documents before us; and if to the brief remark which I have made, it is necessary to add any thing to prove,

that the policy of this Government is such as I have represented it, I refer myself to the argument of the gentleman from New York, with whom I concur generally, in the view which he has taken of this distinctive feature, in the political history of this Union.

Standing on an elevated position in an attitude which has secured to us the respect and admiration of the world—having attained this elevation, by preserving an entire freedom of action, and by the rapid development of our own resources, what is it that should tempt us to descend from our high estate, to mingle in diplomatic intrigues, and to make ourselves parties to international Confederacies, on this or the other side of the Atlantic? Especially it is most obvious to inquire, what is the character of that association, of which we are about to become a party, by approving this nomination? Sir, it is not a mere Diplomatic Council. It is an international assembly, created by treaties, and invested with powers, which are efficient for the purposes of its institution, some and the principal of which are belligerent. An association with such a Congress, must necessarily commit our neutrality.

The general argument on these propositions, has been pressed with so much perspicuity and force, by gentlemen who have preceded me; they have gone into such fulness of detail, that I do not propose to tax the patience of the Senate, by a renewed discussion of the whole question. There are two points connected with it, however, on which I desire to be heard.

In the first place, I ask the attention of the Senate to this remark.

Whatever declarations may be made to the contrary, however foreign it may be from the intention of the President, it will be the *necessary consequence* of this mission, that we shall become parties to the Congress of Panama, to the extent of what is denominated the pledge of Mr. Monroe, or we must disappoint the expectations, and excite the resentments, of the Spanish American States. This proposition includes these ideas:

That the Spanish American States consider this Government as pledged to them to resist the interference of any European power in the war which they are waging for their independence, by force of the official declarations of Mr. Monroe, and the subsequent acts of our administration.

That it is one and a principal and distinctly avowed object of the proposed Congress of Panama, to concert the means by which effect is to be given to this *our* system of policy.

That the assent of the Senate, the remaining branch of the treaty-making power, is alone wanting to *commit the national faith*, however the forms of the constitution may require other agencies for its *redemption*.

That a failure to realize these expectations, must be productive of feelings of coldness and ill will.

Let us examine the two first in connection.

Does any gentleman doubt what is the view taken of this declaration by the Republics of Spanish America, or that they consider it to be one of the subjects of the deliberations of the Congress at Panama, in which we are to participate? On both these points, the Minister of the United States of Mexico is clear and explicit. He expresses himself thus: "The Government of the subscriber never supposed nor desired that the United States of America would take part in the Congress about to be held, in *other matters than those* which, from their nature and importance, *the late administration pointed out and characterized* as being of *general interest to this Continent*." This is the strongest mode of expressing both the expectation and the desire of the Mexican Government, that the United States would take part in the Congress, *in those matters which had been so characterized and pointed out*. The Minister proceeds: "*For which reason*, (that is, because the late administration had pointed it out as of general interest to the Continent,) one of the subjects which will occupy the attention of the Congress, will be the resistance or opposition to the interference of any neutral nation, in the question and war of independence, between the new powers of the continent and Spain." Here is the idea in bold relief, a distinct assertion, that resistance to the interference of any European power, in the war between Spain and those States, is a question of general interest to the continent, this Government included: that it has been expressly so characterized by the late administration, and that it is one of those subjects to be discussed in that Congress, *in which we are expected to participate*. But how participate? By our counsels merely? No, sir. Being, as this Minister asserts we are, "of accord (with them) as to resistance," we are, in that Congress, to "*discuss the means of giving to that resistance all possible force*," which, he adds, is only to be accomplished "by a previous concert as to the mode in which *each shall lend its co-operation*." The Minister of Colombia is equally decisive on this point. He speaks of this subject as one to be discussed in the Congress, and one of great importance; suggests the propriety of a treaty in relation to it, to remain secret until the *casus fœderis* should happen, and adds, "This is a matter of immediate utility to the American States that are at war with Spain, and is *in accordance with the repeated declarations and protests of the Cabinet at Washington*." To this discussion, and this treaty, he manifestly expects that we are to become parties.

Is it not then obvious, that these invitations have been given by the Ministers of the Spanish American States, under a perfect conviction, which is plainly and frankly expressed in the very letters of invitation, that we would participate in the deliberations of the Congress at Panama, in the resistance to be made to the interference of any neutral nation, in the question and war of independence between these States

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and Spain? And that, *conceding the principle*, that we are bound to much resistance and opposition by our own previous and repeated declarations and protests, we would proceed to concert with them in that Congress, the means of giving to that resistance the greatest possible force?

*Shall we realize these expectations?* We are, then, to take our seats in an international assembly, composed of Deputies from five belligerent States, with instructions, I care not how restricted, to stipulate with them the terms of an eventual alliance, in the prosecution of the very war in which they are now engaged; to arrange the means of giving to our joint efforts the greatest possible force. Are gentlemen prepared to do this? Sir, this wretched bantling must one day breathe the upper air. However darkly nurtured in this political dungeon, to which the sign manual of the President, and our own too easy confidence have consigned us, it must see the light. It must stand before the majesty of the American people. Do gentlemen believe that *they* are prepared to do this thing? To stake the fair and goodly heritage, to which they have succeeded, on the issue of a contest with the powers of Europe, in defence of these new Republics? In defence of any other rights but their own?

But, does this pledge exist? Is this Government bound by a contract so disastrous? If it be so—*fides servanda est*. But I deny the fact. I deny that this celebrated pledge, as the Secretary has denominated it, has any existence but in the imagination of the visionary. Let us, for a moment, examine it. If genuine, it will bear inspection. It is described by the Secretary, as the memorable pledge of the President of the United States, in his message to Congress of December, 1823. Now, the President had no authority, by his own act alone, to pledge the United States to a foreign power. He did not intend to do so. It was a mere declaration of the policy, which, under given circumstances, he believed it proper for the United States to pursue. It did not bind him. It did not bind Congress. They declined to respond to it. No foreign power could demand the enforcement of it, because no foreign power was party to it. If, when the crisis arrived, the President and Congress, for the time being, should take the same view of the policy of the United States, the principle of this declaration would be acted upon. If otherwise, it would be abandoned. The notion of a *pledge* is visionary. That implies a contract, an agreement, on consideration. Here was a mere gratuitous declaration to Congress, of one of the public functionaries of this Government, which never received the sanction of that body.

Last year I was told, in the court below, that the United States had given a pledge to the nations of the world, for the suppression of the slave trade. I denied the existence of such a pledge, and the doctrine was not acknowledged by that tribunal. The answer was obvious. That could not be a pledge, which the United

States might capriciously withdraw. It was a rule prescribed for the conduct of our own citizens, under the solemnity of an act of Congress, indeed, but which another act of Congress might repeal, and the pledge was gone. The pledge of which we are now speaking, had not even the sanction of an act of Congress, nor of either branch of the Legislature. Hitherto, then, we are free to act. We are bound by no pledge. But the President of the United States has proclaimed a principle of policy, on the basis of which the new powers have given us an invitation to this Congress, the chief and avowed object of which is to concert the means of giving effect to this principle, by the combined exertions of the American States, this Government included. If the Senate advise its acceptance, is not the faith of the U. States committed? The power to give effect to the principle, will indeed depend on the ratification of a treaty by two-thirds of the Senate, and the provisions of that treaty can only be called into active operation by the whole force of the legislative power. But if either be withheld, will not the public faith be violated? If yielded, will not the peace of this Union be put in jeopardy, and made to depend on events with which it has no natural connection, and over which it can exercise no efficient control? Can you refuse, without disappointing the just expectations of the Spanish American States!—expectations which this Government has created, and which it has distinctly and expressly recognized in its negotiations with these States? Of such a conduct, the inevitable result must be feelings of resentment and indignation, which will not be the less strong, because, peradventure, in obedience to the suggestions of policy, they may for a time be suppressed.

Sir, this is not the only belligerent question which we must discuss in the Congress of Panama. The second remark which I have to make on this branch of the subject, is this: If we do go there, our own interests will imperiously demand, that we should share in those deliberations which are to determine the fate of Cuba and Porto Rico; and *this is a question which we cannot safely commit to negotiation*.

The original message of the President, which called us to the exercise of our advisory duties, left us wholly without information on this subject. When the additional documents, for which we had asked, were furnished, it became obvious that the fate of these islands was to be decided in the Congress of Panama, so far as the Spanish American States had power to decide it. This state of things at once demanded our most earnest and serious attention.

When we look to the situation of those islands—to the commanding position which they occupy, with reference to the commerce of the West Indies—we cannot be indifferent to the change of their condition. But when we reflect that they are in *juxtaposition to a portion of this Union, where slavery exists*; that the proposed change is to be effected by a people, whose fundamental maxim it is, that he who

would tolerate slavery is unworthy to be free; that the principle of universal emancipation must march in the van of the invading force; and that all the horrors of a servile war will too surely follow in its train—these *merely commercial* considerations, sink into insignificance—they are all swallowed up, in the magnitude of the danger with which we are menaced.

Sir, under such circumstances, the question to be determined is this: *With a due regard to the safety of the Southern States, can you suffer these islands to pass into the hands of buccaneers, drunk with their new-born liberty?*

I repeat the question—can you suffer this thing, consistently with the duty which you owe to Maryland, to Virginia, to Kentucky, to Missouri, to Tennessee, to North and South Carolina, to Georgia, to Alabama, to Mississippi, to Louisiana, and to Florida? Nay, sir, New England, securely as she feels on this subject, is not without interest in the result. A numerous colony of her sons are, at this moment, toiling in temporary exile, beneath the fervid sun of Cuba. If the horrors of St. Domingo are to be re-acted in that beautiful island, *they* will be its first victims.

What, then, is our obvious policy? Cuba and Porto Rico *must remain as they are*. To Europe, the President has distinctly said, “We cannot allow a transfer of Cuba to any European power.” We must hold a language equally decisive to the Spanish American States. We cannot allow their principle of universal emancipation to be called into activity, in a situation where its contagion, “from our neighborhood, would be dangerous to our quiet and safety.” The President would brave the power of England, to prevent *her* acquisition of Cuba—and why, sir? To keep the receipts of our custom house at their maximum—to preserve our commerce and navigation. Will he quail before the new Republics of the South, when a dearer interest is at stake?

I know, sir—the documents before us prove it—that we have been exhibiting the character of a *political busybody*, in the Cabinets of Europe and America. I know, sir—the documents before us prove it—that, in the progress of this splendid diplomatic campaign, certain declarations have been made to the different powers, *cis-Atlantic* and *trans-Atlantic*, which it may be difficult to reconcile. But, so far as they conflict with the duty which we owe to ourselves, they must be reconciled. *The safety of the Southern portion of this Union must not be sacrificed to a passion for diplomacy.*

The United States are yet free from these diplomatic fetters. *They* are not pledged. We have entered into no bonds. If it shall consist with our interest that Cuba should pass into the hands of England or of France, rather than to see another Haytian Republic erected there, we are free to permit it. If our interests and our safety shall require us to say to these new Republics, *Cuba and Porto Rico must remain as they are*, we are free to say it. Yes,

sir, and, by the blessing of God, and the strength of our own arms, to enforce the declaration, and let me say to gentlemen, these high considerations do require it. The vital interests of the South demand it, and the United States will be recreant from its duty, faithless to the protection which it owes to the fairest portion of this Union, if it does not make this declaration, and enforce it.

Shall we go to Panama to do this? It is one of the thick-coming fancies, which bewilder the minds of the advocates of this measure, that it will tend to protect the interests of the Southern States; that their interests require that we should send Ministers to Panama, to discuss this question concerning Cuba and Porto Rico; yes, sir, *enfettered as our Cabinet is by its pledges and declarations*, that we should commit to the hazard of negotiation, a question of *vital* interest to us, in relation to which we have nothing to yield.

The Deputies of the Spanish American Republics go to Panama, with the settled conviction that they have the right to strike at Spain, by inciting and aiding Cuba and Porto Rico to revolt; and although they will not ask us to join in the operation, they will expect us to consult with them, as to the relations to be maintained with this new power. Unless we are faithless to ourselves, our Deputies must be instructed, that *no change* in the condition of these islands *can be permitted*. What benefit can you expect from such negotiations?

Our Deputies will be told—The Cabinet of Washington have recognized our right to strike our enemy wherever we can reach him. They have expressly disclaimed *their* right to interfere, to prevent us from attacking Cuba. At their instance, we have suspended this movement, until the result of their mediation with Russia was ascertained. In requesting a mere *suspension*, they have reiterated the admission of our right. We have performed an act of courtesy in yielding to this request, but the period of suspension has passed. We return to our original purpose, and you cannot consistently interfere with its execution.

Sir, we must cut this Gordian knot. We must relieve ourselves from these diplomatic fetters. We must *pledge* ourselves, not to foreign nations, but to that portion of our own citizens who have a deep and vital interest in this question, that the condition of Cuba and Porto Rico shall remain unchanged. To the Spanish American States, we must *notify our determination*, in terms of perfect respect and good will; but still as our fixed determination. Shall we go to Panama to do this? To expose our Deputies to their reproaches for our imputed inconsistency? Or to insult them by a studied mockery in opening a negotiation with a fixed determination to dictate the terms—with an entire conviction that we have nothing to yield to them? Sir, on such a subject, the will of the people of the United States should be expressed, through their Representatives in both



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Houses of Congress, by an act to invest the President with the powers which will be adequate to the crisis.

These, sir, are the reflections which occur to me on this branch of the subject. To my mind it is obvious, however we may protest against any intention to violate our neutrality, that *as a necessary consequence of this mission*, we must become parties to the Congress of Panama, to the extent of what is denominated the pledge given by Mr. Monroe—a pledge which the people of the United States are not prepared to admit, and to redeem,—a pledge, the redemption of which would most distinctly commit our neutrality; *or*, refusing to do so, that we shall disappoint the expectations which we ourselves will have created, and that feelings of ill will and of eventual hostility, must be the necessary result.

Mr. DICKERSON, of New Jersey, rose, and said, it was his intention, when this subject was first brought before the Senate, to take no part in the discussion; but, on the final question as to the expediency of the measure, to call for the yeas and nays, and record his negative. The extraordinary course, however, adopted within, as well as without these walls, had put those opposed to the mission upon the defensive.

I am not willing (said Mr. D.) to be considered as belonging to an organized opposition to the administration—if, indeed, there is such an opposition. On the contrary, yielding to the administration, I have, on more occasions than one, voted in favor of nominations by no means agreeable to me, and have no doubt I shall often do so, in future; others act with me, most probably, from similar motives. But we must not be taxed too heavily. We must sometimes be allowed to think and act for ourselves—and if, for the exercise of this right, the Government papers are to be let loose upon us, we must defend ourselves as well as we can.

We, who are opposed to this mission to Panama, are accused in papers that receive the patronage of the Government, of being conspirators, who seek to conceal our views; and, by closing our doors, to seal up every avenue to information. Here, at least, it is known, that, in discussing this question with closed doors, we have yielded, reluctantly, to the injunctions of the Executive. Under these circumstances, I must be permitted briefly to state the reasons for the vote I shall give, and to convince my associates within these walls—for we are denied an appeal to our constituents without—that I am no conspirator; that I am not governed by motives of faction, or a desire unnecessarily to embarrass the administration.

I am, from principle, opposed to all unnecessary extension of our diplomatic concerns—next to a passion for war on the part of our Government, I most dread a passion for diplomacy—a stronger symptom of which I have never seen, than in the case now before us.

I consider it a serious misfortune that any of the new States of Spanish America have been

induced to invite the Government of the United States to send deputies to their great Congress at Panama; and moreso, that the President of the United States has felt himself authorized to accept the invitation. The invitation itself was of a character so extraordinary, that the Ministers of Colombia and Mexico would not present it, until, by inquiry, they ascertained a point, on which they certainly had strong doubts, that it would be well received. And the President at first perceived, and stated, so many difficulties, to be obviated before the invitation could be accepted, that, unless they had been removed, by some process which we are utterly incapable of comprehending, the invitation must have been declined. The explanations given by the Ministers of the new States, were calculated to increase, rather than obviate, the difficulties that had suggested themselves to the President, and we find those explanations were not satisfactory, when he determined to accept the invitations.

Mr. Clay, in his letter to Mr. Obregon, of the 80th November, five days before the meeting of Congress, says, "in your note there is not recognized so exact a compliance with the conditions on which the President expressed his willingness that the United States should be represented at Panama, as could have been desired;"—yet, "the President has determined, *at once*, to manifest the sensibility of the United States to whatever concerns the prosperity of the American Hemisphere." The President has not condescended to inform us of the circumstances which induced him to abandon the cautious policy which he first adopted, but seems to presume upon some sympathetic movement in this body, which shall induce an acquiescence in his views on our part, without the light which has shed its influence over his mind; and, no doubt, it is considered as an extraordinary circumstance that we do not, also, determine, *at once*, to manifest the sensibility of the United States to whatever concerns the prosperity of the American Hemisphere.

This body, however, is not in the habit, and I hope never will be, of determining, *at once*, upon questions of doubtful policy, as this was certainly considered to be, on the first impression, by the President himself. Deliberation is the peculiar characteristic of the Senate of the United States; such has been its character heretofore, and the present case affords abundant proof that such will continue to be its character. We are not governed by sudden impulses—no course pursued within or without these walls, can force us into a hasty decision, upon this, or any other important measure.

The United States have, at all times, manifested the utmost sensibility, as to what concerns the Republic of Mexico, and those of South America, by being the first to acknowledge their independence—by sending Ministers to their respective courts, and by adopting treaties with them of the most friendly character, upon terms of perfect reciprocity. We shall, no doubt, keep Ministers at their courts, to cultivate and



preserve the most friendly relations between them and us; to go farther than this, will lead to embarrassments—a system of fraternization must end in dissension.

It is not the interest of these Republics that we should embark in their cause, and surely there is no reason for their embarking in ours; with them, there is a sense of common danger, which alone can bind and keep them together. In that danger, we need not, and it is to be hoped, will not participate.

It was long after these new States had made their arrangements for holding their Congress at Panama, before they thought of inviting the United States to take any part in their union, league, and confederation; nor is it probable it would have occurred to them at all, but for what Mr. Clay calls, "the memorable pledge of the President of the United States, in his message to Congress of December, 1823," that the allied powers of Europe could not extend their political system to any portion of either continent of America, without endangering our happiness; that we could not believe that our Southern brethren, if left to themselves, would adopt it of their own accord; and that we could not behold such interposition, in any form, with indifference. And the still more memorable pledge, in the same message, that the American continents are, henceforth, not to be considered as subjects for any future colonization by any of the European powers.

As to the first, we may see the light in which it was viewed by the Government of Mexico, when they called upon the United States to redeem this pledge, by interfering to prevent, what they supposed an attempt to invade Cuba, by a French force last summer.

If these new Governments suppose we are to redeem this pledge, any farther than to promote our own views in preventing a change, as to the possession of the islands of Cuba and Porto Rico, they deceive themselves—and it is very certain they have deceived themselves. As to the other pledge, that the nations of Europe shall not plant colonies on either of the continents of North or South America; these new States ought to know, that the President had no power to give such a pledge. If the powers of Europe possess, by right, any portion of either of these continents, they may colonize such possessions, and this Government will not prevent them—the pledge of the late President to the contrary, notwithstanding.

These pledges, which the Senator from Louisiana (Mr. JOHNSON) thinks produced an electric shock in Europe, and brought the Holy Alliance to a pause, in my humble opinion produced but little effect, except to induce the new Republics to give this invitation to join the Congress at Panama, and will produce but little effect, except to embarrass our Government hereafter.

What is the nature and character of the Congress to be assembled at Panama?

It is to be composed, in the first place, of Del-

egates, called Plenipotentiaries, from five new States, formerly Spanish, and still claimed by Spain as Colonies, but whose independence has been acknowledged by the United States and by Great Britain. From the novelty of their situation, and exposure to danger from internal as well as external enemies, they have thought proper to strengthen themselves by compacts of union, league, and confederation, to be consummated by this Congress at Panama. The powers of this Congress are regulated by the treaties of union, league, and confederation upon which it is founded—and no doubt, is to be as lasting as those treaties themselves.

The Congress at Panama will be brought together, and can only be kept together, by a sense of common danger amongst the States represented; and, in all particulars, it will more nearly resemble the Amphictyonic Council, than any other assembly we read of.

This Council was founded on compacts of union, league, and confederation, among the States represented, for the protection of their liberty and independence against powerful enemies, who, but for such union, would have subjugated them in detail. It was instituted principally with a view of uniting in a sacred bond of amity, the several States of Greece that were admitted into it, and of obliging them, by that union, to undertake the defence of each other, and to be mutually vigilant for the tranquillity and happiness of the country. They were, also, created to be protectors of the oracle of Delphos.

The powers of the Congress at Panama have been accurately delineated by gentlemen who have preceded me. I shall endeavor to be more explicit as to powers which are denied them.

This Congress is not to be considered as a sovereign power—as by the treaties on which it is founded, they must in nowise interrupt the exercise of the national sovereignty of the contracting parties; nor can they interfere, in whatever regards the relations of the States represented, with foreign nations. There will, therefore, be no court at Panama to receive Ministers from sovereign States or powers. It will be observed that the Deputies to be sent to this Congress by the new States, are nowhere called Envoys or Ministers, but Plenipotentiaries; the plenitude of their power, however, is limited by treaties to specific objects. They are not considered in the character of Ministers entitled to protection by the law of nations: for the States respectively have taken care to secure to their representatives this protection by express treaty. No provision, however, of this kind, is made in behalf of the Deputies of the United States, and clothing them with the titles of Envoys Extraordinary to the Assembly of American nations at Panama, which is not a court or sovereign power, will not ensure to them the protection due to Ministers under the law of nations. But, as Colombia has joined in the invitation, and as Panama is within its territories, if our Ministers shall not be treated with the hospitality due to their characters as Deputies—and more

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they are not entitled to, as they were only invited as such—we shall have just cause of complaint against that Government, and that is all we have to rely upon in this particular. The Congress at Panama is confined strictly to the States formerly Spanish, by all the treaties between them, for holding the same. The President nominates our envoys to the Congress of *American nations* at Panama—which would embrace the United States—a name which it will be proper to assume, if our Delegates take seats in this Congress, and not otherwise. This proves, if other evidence were wanting, that it is intended our Ministers shall take their seats in this Congress.

Mr. BENTON, of Missouri, said he had not expected to speak in this debate; and, if he had spoken among the first, it would have been on a different side from that on which he now appeared. Before I had examined this question, (said Mr. B.,) I was willing to have voted for this mission, such as I saw it represented to be in the President's message, and in the publications of the day. But time and reflection have done their office. The report of our Committee on Foreign Relations, when read at the Secretary's table, set me thinking, and the subsequent study of the report, and of the treaties which create this Congress, have wrought a decided change in my mind. I am now ready to vote against the mission, but do not wish to vote upon the resolution reported by the committee, because a vote upon *that* will not express my exact opinion, and because it contains a word, strictly correct I admit, but calculated to lead undisciplined minds, in this age of loose talking, to an erroneous and false conclusion. Thus, I am laid under a sort of necessity to submit an amendment. The submitting of this, lays me under an absolute necessity of exposing my reasons for doing so; and the exposition of these reasons presents me as a speaker in a case in which I had expected to act no other part than that of a juror in his box. But the Senate need not be alarmed. I do not premeditate a speech of formal parts against them; for it is no time now for exordium and peroration. In this last hour of a long debate, nothing can be tolerated but a straightforward argument of facts and conclusions; reasons and authorities. The politeness even of this Senate can endure no more; and, with this conception of my duty, I proceed immediately to the discharge of it.

The Senate is called upon, as the constitutional adviser of the President, to give its opinion to him upon his proposition to send Ministers to the Congress of the Spanish American States assembled upon the Isthmus of Panama.

The circumstances out of which this proposition has grown, as disclosed to us in the President's communications, are these: A conditional invitation to send representatives to this Congress was made to this Government last spring, and conditionally accepted by it. The Ministers of Colombia and Mexico, two out of the five powers which compose the Congress, made

known to our Secretary of State, in an unofficial conversation, the wishes of their Governments that the United States should be represented in that assembly of the States of the two Americas; and the President, upon receiving the Secretary's report, expressed his willingness to send the Representatives requested, upon condition of receiving satisfactory information upon four preliminary points, which he designated. This might be in the months of April or May last, for they are both spring months, and the time is not otherwise indicated than by a reference to the season. The summer then passed away, and the autumn also, without hearing more upon this subject; but the commencement of winter, the month of November, brought up the Ministers again, reinforced by the envoy from Guatemala, with an invitation, in form, to send the Representatives which had been conditionally invited in the spring, and without having complied with the conditions stipulated for by the President. This took place on the 2d, 8d, and 14th of November; and, on the 30th of the same month, six days before the meeting of the Senate, the President accepted, unconditionally, the invitation which he had accepted on condition in the month of April or May preceding, and without a compliance with his own stipulated terms, or an excuse for a non-compliance with them. The annual message, of the 6th of December, made known to the two Houses of Congress the fact of the invitation, of the acceptance, and of the President's intention to commission and send forth the Ministers. The annunciation of this design arrested the public attention, set people to thinking and to talking, and in the same identical time in which a thousand heads were at work to make "*reconciliation and peace*" between this declared intention of the President, on the one hand, and the constitution of his country on the other, another message was received by the Senate in secret sitting, in which the President directly and unequivocally asserted his "constitutional competency" to institute the mission, without the advice and consent of this body.

The further declaration, in the same message, that he had not "*thought proper*" to take any step in this business, without ascertaining the Senate's opinion of its "*expediency*," expressed upon the "*nominations*," contains no qualification of the asserted right; and to suppose that the Senate would not take the distinction between the assertion of a right, and the effect of a condescending temper, would be to suppose them intellectually incompetent to pass judgment upon that claim to "*constitutional competency*," which the President had so openly and boldly set up.

The character of the Congress itself, whether diplomatic, legislative, judicial, or merely "advisory;" the character of the Representatives to it, whether Ministers, Deputies, or Judges; the subjects upon which they are to deliberate; the mode of acting, whether as a Council merely, a Congress of Deputies, or an Assem-

bly of diplomatic Ministers; all are fruitful sources of inconsistent and contradictory opinions, running foul of each other, and differing, more or less, from the treaties which would govern and control all. The report of the committee points out many of these differences; the labor of gentlemen who have preceded me, have detected many others; and enough yet remain for my enumeration to exhaust your patience, in listening, and my strength, in detailing. The task will not be undertaken, but a few of the most glaring and prominent differences, omitted by others, will be seized upon and presented by me. First, upon the character of the Congress. The President treats it as a diplomatic assembly for the negotiation of treaties in the ordinary form; the Colombian Minister considers it a Congress which is to "*fix*" principles and "*determine*" questions of national law. The Mexican Minister treats it as a Council of War, which is to give the greatest effect to the military operations of the Confederates; the Senator from Rhode Island (Mr. ROBBINS) declares it to be a mere advising Council, without power to negotiate a treaty, or to enforce obedience to its advice; and the Senator from Louisiana (Mr. JOHNSTON) looks upon it as a Committee of Public Safety, in which questions of common interest may be discussed, but nothing decided, nor any treaty negotiated. Next, as to the subjects of deliberation in the Congress. Upon this point, the greatest discordance prevails in the enumeration given by each. The Senator from South Carolina (Mr. HAYNE) has clearly exposed these inconsistent and contradictory catalogues; and I will not impair the force of his statement by a lame and imperfect recapitulation. Then, as to the powers of the Ministers. These would seem to result, of course, from the subjects upon which they are to act, and as these are unknown, so are the powers undefined and undefinable. The Ministers from Colombia and Mexico entreat us to clothe our envoys with "*full powers—ample powers.*" The President invests our envoys, and presumes the envoys of the other States to be invested, with power to negotiate treaties; while the Senators from Rhode Island and Louisiana, who support the President, utterly deny any such authority to any of the Ministers. Upon the organization of the Congress, its mode of acting, and of deciding questions, there is no contrariety, because no information has been given, or opinions expressed. The Ministers of Colombia, Mexico, and Guatemala, after taking from May till November to answer the President's interrogatories, return him no answer upon these three points, nor any excuse for not doing so. I refer to all these contrarieties, at this time, Mr. President, not for the purpose of showing them to be erroneous—that will be done when I shall come to the analysis of the treaties themselves—but for the purpose of showing the CONTRARIETY itself, and of proving, by this single fact, the truth of my

position, that we are without "*satisfactory information*," upon the character, powers, and duties of this Congress. Having done this, I proceed to inquire:

Is this information necessary to us?

The affirmative of this inquiry, it does seem to me, results from the nature of the thing which we are required to do. The President has called upon us for advice; the constitution makes it our duty to give it. But, to give it in the spirit of the constitution, we must first be informed ourselves upon all the circumstances of the case concerning which the advice is required. This is the natural course and order of things, even in the ordinary transactions of life. No prudent man gives advice to his neighbor, without first acquiring exact information of that neighbor's situation. No honest lawyer will give advice to his client without the exercise of a like precaution. And shall we, the Senators of the United States, required by the constitution to be thirty years of age, to ensure our arrival at years of discretion, and vested with a tenure in office longer, by one-third, than that of the President, to inspire us with independence—shall we, the Senators of four-and-twenty States—act without discretion and without independence, in giving advice upon the affairs of ten millions of people? Reason would say, no! But we are not left to reason and argument, even upon a point so plain. We have authority, and that of the highest order, for insisting on the justice and reasonableness of our request. It is the authority of the President himself, acting upon the identical case now before us, and communicated to the Senate by himself, in his confidential message of December 26th.

[Here Mr. B. read a passage from Mr. Clay's report, in which the Secretary informs the Ministers from Colombia and Mexico, that the President held it to be "necessary, before" he could accept the invitation to send Representatives to Panama, to arrange "several preliminary points, such as the subjects to which the attention of the Congress would be directed, the substance and form of the powers to be given to the respective Representatives, the mode of organizing the Congress, and its mode of action."]

Compare the terms of my amendment, Mr. President, with the terms of the report just read, and you will find them to be identically the same, to a word, and even to a letter. One is a fac-simile of the other. My amendment is a mere re-occupation of the ground which the President took, as I conceive, with judgment, in May, and which he abandoned, without any reason that he has seen fit to assign to the Senate, in November following; and I must be permitted to argue, that the same "*satisfactory information*" which was necessary to him, before he would accept the invitation to send Ministers, is equally necessary to the Senate, before it can advise him to send them.

But, sir, we are placed in a strait. The

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President exacts our advice, and refuses us further information. The gentlemen in support of the Administration, back the President in this course of conduct, and even deny us the short respite of an adjournment. We are in the condition of a petty jury in a case of homicide or larceny, locked up, sir, night and day, restricted to the enjoyment of candle and water, and not permitted to separate until the verdict shall be rendered. This is a new way of getting advice from the Senate. The oldest members say they never saw the like of it before, not even during the war, when the dangers of the country required the most arduous sittings; but, after what we have seen, we are all prepared for any extremity.

The fact being established, that the Senate has not satisfactory information upon which to act, and being nevertheless forced to act, I shall proceed to examine what we have got, and prove from this that the United States ought not to entangle itself with the Congress of the confederated States of Spanish America.

The most innocent character in which this Congress has been presented to us, is that for which we are indebted to the ingenious speech of the Senator from Rhode Island (Mr. ROBINSON)—that of a mere advising Council. Taken in that sense, and it is a Council of War, deliberating upon the plan of a campaign—meditating the invasions of Cuba, Porto Rico, the Philippine Islands, and the Canaries. Its essential character is belligerent, and to go into it as an “associate,” is to partake of that character. I take a distinction between going, in the ordinary diplomatic form, to the sovereignty of a country which is at war with another, and going into a Council of War for directing military operations, such as this is. The one may be consistent with the neutral position, the other is utterly incompatible with it. Gentlemen betray their sensibility to this fact, when they allege, in mitigation of our conduct, that we go to dissuade the Confederates from invading the possessions of Spain. If, in reality, they go for that purpose, they will be very unwelcome counsellors to those who are determined upon that invasion, and who are collecting all possible means to give it the greatest possible effect. And Spain—what will she say to our excuses and apologies? She may disbelieve them, and, in that case, she will consider us as the “associate” of her enemy; or, she may affect to credit them, and make them the ostensible groundwork of a gracious act of amnesty and oblivion of our offence. They cannot be received in justification: for associates in any illegal purpose are guilty in equal degrees, without regard to the particular part which each may have acted. A plea, that part of the associates did not concur in the criminal act, rises no higher than to establish a claim for pardon—a claim which, the Senator from South Carolina (Mr. HAYNE) has shown you, a king of Great Britain refused to recognize in a Peer of the realm.

The advising power is a high one. It cannot be assumed by nations or individuals. Between them, consent alone can give it; between functionaries, the law alone can confer it; but, wherever it is given by consent, or conferred by law, a high moral and honorary obligation is contracted by all the parties concerned, to conform to such advice. Nothing but fraud, imposition, or change of circumstances, can justify a want of conformity; all of which are grounds of extreme delicacy to be assumed between nations, and yet the only ones which the dissentient party can plead with honor. If we go into council with these nations, we must either follow the advice given, or reject it. If we follow it, then the free deliberations of our Congress here are trammelled and controlled by the Congress at Panama. If we reject it, we must either dissent in silence, and incur the imputation of perfidy, or come out with reasons which may impeach the honor of our associates, and draw upon us the serious consequences of their resentment. Upon this subject, we already have some experience with one of these powers. A convention for the suppression of the slave trade was negotiated with Colombia in 1825, sent home for ratification, and rejected by the Senate in the undisputed exercise of its constitutional power. Yet, Colombia is dissatisfied at this rejection. Her Minister here has adverted to it in terms which cannot be misunderstood, and has even proposed it for the consultation and advice of the Congress at Panama! The decisions of the American Senate to be overhauled by the Congress at Panama! \* Suppose we agree to this proposition. The result is easily foreseen. The decision will go against us, five to one. Then we must submit; the American Senate must conform; the resentment of the Confederate powers will be held up to alarm us; and if we do not yield to that argument, the effect of the resentment itself will surely be incurred.

The maxims of prudence are the same among individuals and nations. Neither can become too intimate with the other, without danger of breaking up all friendship between them. The sweetest wine makes the sourest vinegar; the best of friends become the worst of enemies! No feuds so bitter as those of families; no cause of quarrelling so common as intimacy over-much! No peacemaker half so powerful as distance, independence, and complete separation of interests! and, to my mind, there is infinitely more danger of making enemies than there is chance for gaining friends, in this project for going into this “advising council,” to mix up our affairs with those of half a dozen foreign nations.

I say, Mr. President, the advising power is a high one: it is little less than a power to control and govern the event. The President has

\* The President, in his Message to the House of Representatives, declares the fact, that this question, although decided by the Senate, is to be made the subject of fresh deliberation at Panama!—*Note by Mr. B.*

no power to advise *this* Congress; he can only recommend; and, little as a recommendation was intended to influence our deliberations, we all know and see its potent and almost irresistible effect. Shall we take advice, then, from abroad? May the President go abroad for that advice which he cannot obtain from this Senate—his constitutional advisers—and then deliver it to this Congress, with the option, on our part, of following this foreign advice, or of incurring the resentment of all these powers, in addition to his own, if we do not act as desired? The States of this Union have a right to send us their opinions; but have we a right to send Ministers abroad to get other opinions to overrule, or even to confirm *their* instructions?

But, Mr. President, this is a council for something more than consultation and advice: it is for deliberation and action; it is a council in the sense of the Amphictyonic—that council which Bolivar had in his eye when he declared that the *Isthmus* of Panama would become more celebrated in history than that of Corinth. The only place in the treaties in which the Congress is mentioned as a council, announces it to be a tribunal for the decision of questions in the last resort, and without the power of appeal. It is to be an *arbitrator* of differences among the States; an *interpreter* of their treaties; a *rallying* point in common dangers; a *council* in great events; a council of war in time of war—of peace, in time of peace. What else can this imply, but a power to decide, and to enforce obedience? The power to enforce the decision results from the right to decide. So said the *Federalist*, speaking of our Congress of 1778. But our Congress was restrained from putting refractory States to the *Ban* because it was limited to the exercise of powers "*expressly*" granted. This restriction upon the exercise of a power resulting from the nature of the Confederation, and held by some to be necessary to its preservation, (*General Hamilton, in the Federalist*.) was given as the illustration of the necessity of omitting the words "*EXPRESSLY delegated*" in our constitution. The treaties of the Spanish American States contain no such restriction, and the *Ban* of the Confederates will be as naturally resorted to by the majority in the Panama Congress, as it always has been by the majority in the Diet of Ratisbon or Frankfurt.

Keeping steadily in view the double aspect under which this Congress has been presented to us, we have next to inquire, whether it constitutes a "Diplomatic Assembly" with power to negotiate treaties in the ordinary form? The President, in his Message, evidently holds the affirmative of this inquiry: the two Senators who support him with their voice on this floor (Messrs. ROBBINS, of Rhode Island, and JOHNSTON, of Louisiana) maintain the negative. These gentlemen call it, sometimes, a Diplomatic Assembly, but deny its power to nego-

tiate a treaty. Strange diplomatists, indeed, who cannot do the only thing which confers the title of diplomatic! For complimentary embassies are unknown to these United States; they belong to the crowned heads of the Old World; and with us, the power to negotiate treaties is the essential and indispensable attribute of the diplomatic character. I hold these gentlemen to be in error upon this point, and the President also. The respect which I owe to him and to them requires me to state the grounds of their opinions with all possible candor, and to advance my own arguments in opposition, with all the diffidence which is compatible with a firm reliance upon their truth.

Thus it is shown, Mr. President, that *Deputies* in Spain frequently wore the title of *Ambassadors*, without having any pretension to diplomatic character; that *Ministers* to Congresses might be nothing but *Deputies*, or *vice versa*; that the name of *Minister* would add nothing to the *Deputy*, nor the name of *Deputy* detract any thing from the *Minister*. Then, we may conclude that these Spanish American States, in giving the name of *Plenipotentiaries* to their *Deputies*, were acting upon a usage with which they were familiar in Old Spain; and I will very soon show you, that in giving this name, they neither gave, nor intended to give, diplomatic functions or character.

For this purpose I take up the second of the articles which I have read, article 15th of the treaty last referred to. This article stipulates for the rights of hospitality, and for the inviolability of person due to the character of Ambassadors. Now, sir, why stipulate for ambassadorial privileges if they were already possessed? And if these Plenipotentiaries are Ambassadors, they have all the privileges of the character, without the officious help of treaty stipulations. They derive them from the law of nations, which covers with the rights, privileges, and immunities of the diplomatic character, every Minister, the instant that he is appointed, just as readily and as naturally as the municipal law throws its protection over every child the instant it is born. To suppose that a treaty stipulation would be necessary in one case, would be just as absurd as to suppose that a special act of assembly would be wanting in the other. Why then these treaty stipulations? I answer, because inviolability of person is necessary to all legislators, to enable them to do the public business. We have it ourselves, not under the law of nations, but under an article in the Federal Constitution. The members of Congress in Colombia, Mexico, Guatemala, and the other Federate States, have it likewise, and in like manner, under articles in the constitutions of their respective countries. Why then this treaty stipulation in behalf of these gentlemen at Panama? Because, exemption from arrest and imprisonment was necessary to the free and regular transaction of their business, and their official character being unknown to the

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constitution of their respective countries, or to the law of nations, a treaty stipulation became necessary in their behalf; and the inviolability of the ambassadorial character was adopted as a criterion, because it presented the twofold advantage of furnishing an adequate measure of protection, and a rule of measurement known to all the parties.

How will gentlemen escape from this difficulty? The facts are undeniable, and the conclusions irresistible. It will not do to set down these treaty-stipulations to the account of Spanish American ignorance. The writings, proclamations, and State papers of the new powers, place them above the reach of such an insinuation. Besides, they have given us practical proof that they know just as well when treaty stipulations are unnecessary, as when they are not. They have Ministers now here, no less than three of them, and no treaties with us for the rights of hospitality or for the protection of their persons. I repeat it, sir, the conclusion is irresistible! They have protected their Plenipotentiaries at Panama with treaty stipulations, because they are not a diplomatic body, and not entitled to diplomatic privileges under the law of nations; and they have not protected them by like stipulations at this place, because they bear the diplomatic character, and are protected by the law of nations.

This is decisive; I challenge gentlemen to meet it; but a further view yet remains to be taken. These confederates stipulate for *less* in behalf of their Plenipotentiaries, than public Ministers receive without stipulation. They stipulate for nothing but hospitality and inviolability for the persons of their Plenipotentiaries; whereas, under the law of nations, this inviolability extends to the Minister's wife, his children, and his servants; to his house and his coaches; it makes him independent of the jurisdiction of the country, both civil and criminal, in which he resides; in fine, it gives him the privilege of diplomatic ex-territoriality, and thus makes him, in legal contemplation, out of the country in which he is, and in the country from which he came. What an immeasurable distance between these rights and privileges, and a claim for food and bodily protection. Yet even this miserable modicum of ambassadorial privilege is limited in its application to the particular spot in which the Plenipotentiary Congress may chance to sit for the time being. While at Panama, Colombia is to give it to them. If forced by the current of events to remove to Guatemala, or to Mexico, Colombia is released from her obligation, and these States assume it. But Ministers, with diplomatic character and privilege, are not only protected in the country to which they are sent, but in every country through which they pass. The sovereign, indeed, to whom they go, is under a more particular obligation to respect and protect them; but they are entitled everywhere to the rights of hospitality,

and to an entire exemption from bodily hurt or harm. If injured or murdered in such passage, the outrage ceases to be an offence against the municipal law of the country; it swells into a crime against the law of nations; it becomes a justifiable cause for war; and the whole civilized world are bound to condemn, if not to avenge it.

[Mr. B. here referred to several historical examples, to illustrate the truth and force of what he advanced. He mentioned the case of the ambassadors of Francis I. to Venice and Constantinople, who were assassinated on the river Po by the orders of the Governor of Milan, acting under the countenance of the Emperor Charles V.; and that of the French Ambassadors, in the time of the Directory, returning from the Congress of Rastadt, and waylaid on the road by a detachment of Austrian husars, pulled out of their carriages, and cut to pieces with sabres, in the arms of their wives. The first of these events, he said, had given new allies to Francis in his wars with the Emperor; and the second had arrested the current of public indignation, counterpoised the crimes of the Revolution, and, for a while, turned the sympathies of the civilized world in favor of those who were themselves red with the blood of the human race. But he did not mention these examples from any apprehension that our gentlemen of Panama would be murdered on the way, but to show the immeasurable difference between Ministers invested with diplomatic privilege, and these Plenipotentiaries with their treaty-stipulation for food and bodily protection.]

Having made good this point, Mr. President—having shown, upon indisputable facts, clear reason, and undeniable authority, that this Congress at Panama is *not a Diplomatic Assembly for the negotiation of treaties*—I will proceed, without now stopping to show what it really is, to the great constitutional question, which results from this position—the competency, not of the President alone, but of the President and Senate united, to send Envoys Extraordinary, and Ministers Plenipotentiary, to such an assemblage.

The power of the President and Senate to send Ministers abroad, is derived from the 2d section of article 2d of the Constitution of the United States. The section is in these words:

“The President shall nominate, and, by and with the advice and consent of the Senate, shall appoint, Ambassadors, other public Ministers, Consuls,” &c.

The Ambassadors and Ministers here intended, are such only as are known to the law of nations. Their names, grades, rights, privileges, and immunities, are perfectly defined in the books which treat of them, and were thoroughly understood by the framers of our constitution. They are, Ambassadors—Envoys—Envoys Extraordinary—Ministers—Ministers Plenipotentiary—Ministers Resident.

The honors due to each of these orders of public Ministers, differ with their respective ranks and degrees; but the essential character of each is the same, and the rights of all are equal. In the *first* place, they must all be accredited from sovereign to sovereign. So say all the books, without a solitary exception. In the *next* place, they all possess the diplomatic privilege of ex-territoriality; and this includes exemption from the payment of duties, exemption from local jurisdiction, and the right of inviolability for themselves and families, the houses in which they live, and the carriages in which they ride. In the *third* place, they derive all this from the law of nations; no part of it from treaties and conventions. In the *fourth* place, they usually carry letters of credence, always letters patent, containing full powers, which are to be exchanged with those of the Ministers who may treat with them; and, *finally*, they are governed by instructions, and send home the treaties they sign for ratification or rejection.

Now, let us try our intended Ministers by these tests. Let us see whether they possess the attributes, the characteristics, and the essential features of *Ministers*, such as are known to the law of nations, and to the constitution of this Confederation. Are they to be sent from sovereign to sovereign? No, Mr. President! They go to an "advisory council," a "committee of public safety." They set out, indeed, from a sovereign; but, instead of moving upon a horizontal line, upon that elevated level which knows no descent, they run down an inclined plane, and land themselves in a Congress of Deputies\* upon the Isthmus of Panama. Have they the rights, privileges, and immunities, of public Ministers? Far from it: for, after yielding to them all that their fellow-deputies, fellow-counsellors, or fellow-committee-men (as the case may be) can take, they will still have nothing but the rights of hospitality, and of personal inviolability. Have they even this under the law of nations? Not at all: but under certain treaties, to which we are not parties, and which can only include our Ministers by help of a most liberal construction. Will they carry letters of credence? I presume not: for they will find no sovereign powers on the isthmus to whom to deliver them. Will they exchange full powers with the Plenipotentiaries of the other powers? I should think not: for these Plenipotentiaries will be acting under treaties, and our Ministers under a constitution and the law of nations. Will they negotiate treaties, and send them home for rejection or ratification? I maintain that they will not; all the Senators who have spoken before me, both friends and foes to the mission, agree with me that they will not; I maintain that they will not, and cannot; the President alone seems to think otherwise; probably because he has not had time to study

the treaties as we have done. But the fact is remarkable, that no gentleman upon this floor, friend or foe to the measure, supports him in that opinion; and I feel myself justified in dwelling upon the circumstance, and pointing it out to the renewed and continued attention of the Senate.

Tried by these tests, and the diplomatic qualities of our intended Ministers fail at every attribute of the character. Spite of the names which are imposed upon them, they turn out to be a sort of Deputies with full powers for undefinable objects. They are unknown to the law of nations, unknown to our constitution; and the combined powers of the Federal Government are incompetent to create them. Nothing less than an original act, from the people of the States, in their sovereign capacity, is equal to the task. Had these gentlemen been nominated to us as DEPUTIES to a CONGRESS, would not the nominations have been instantly and unanimously rejected? And shall their fate be different under a different name? The delicacy of this position was seen and felt by the Administration. The terms "Deputy," and "Commissioner," were used in the official correspondence up to near the date of the nomination, but as these names could not pass the Senate, a resort to others became indispensable. The invitations and acceptance were in express terms, for "*Deputies and Representatives to a CONGRESS.*" The nominations to the Senate are wholly different.

[Mr. B. here called for the reading of the nominations.]

The Secretary read—

"To the Senate of the United States:

"WASHINGTON, 26th Dec., 1825.

"In confidence that these sentiments will meet the approbation of the Senate, I nominate *Richard C. Anderson*, of Kentucky, and *John Sergeant*, of Pennsylvania, to be Envoys Extraordinary and Ministers Plenipotentiary to the *Assembly of American Nations at Panama*, and *William B. Rochester*, of New York, to be Secretary to the Mission.

"JOHN QUINCY ADAMS."

Assembly of American nations! Is this the fact? Are the nations there? I do not mean to inquire, Mr. President, whether the men, women, and children, who compose the Republics of Colombia, Guatemala, Mexico, Chili, and Peru, have collected themselves in masses upon the Isthmus of Panama—that, sir, would be a vile and contemptible play upon words; but I do mean to inquire, and, "*these ceremonies being burst*," I do mean to go before the American people for the answer, whether the sovereignty of these nations, in fact, or by representation, is at the Isthmus of Panama? For, unless it is so present, the institution of this mission is, and must be, a breach of our constitution.

Is, then, the sovereignty of these nations present in fact? I answer, it is not—the thing is impossible: for these States are Republican,

\* "CONSULTATIVE COUNCIL."—Message to the House of Representatives.



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and Republics are incapable of exercising the right of sovereign ex-territoriality. That quality belongs alone to kings and emperors, who bear about with them, whithersoever they go, the sovereignty of their respective empires. Ministers can be accredited to the sovereignty of a State, wheresoever it may be; and, hence the resort, in this nomination, to the word *nations*. They can be accredited to nothing below the sovereignty, and hence the necessity of dropping the word *Congress*. A nomination to the *Congress* would have been void, upon its face—the Journal would have shown it; and, peradventure, we, the people, might have got it into the Supreme Court, “as a case arising under the constitution,” and had it reversed for manifest error. The error would then have been patent, instead of being, as it now is, latent. Gentlemen have evinced their sensibility to this difficulty—they have felt the necessity of support, and have gone to Ghent and Utrecht for precedents. The references are unfortunate for them and the President—happy for me and the constitution. The cases are antipodes to each other, in every essential point. Here is a nomination of Ministers to nations in gross, at the place where their sovereignty is not, and cannot be. The Ghent nomination was not to the nations at Ghent, nor even to Great Britain at Ghent—but to “Great Britain.” The meeting of the Ministers at Ghent, was an incident—a mere affair of arrangement, and constituting no part of the nomination. There, and at Utrecht, the Plenipotentiaries were accredited to sovereign powers—met their Representatives, under the law of nations, and for a purpose strictly diplomatic—that of negotiating treaties.

Doubtless there may be nominations to sovereigns without their dominions. The late Congresses in Europe furnish examples of the fact; but they are limited to kings and emperors, possessing the quality of sovereign ex-territoriality. But even to these a Minister could not be accredited in mass. He must have separate letters of credence to each, and separate full powers to treat with each. Reason tells us this: for each sovereign has the right to receive and to reject Ministers—to treat or to let it alone. Authority tells us the same thing; and, as authority is often more potent than reason, and this may be one of the cases in which it is so, let us look at the books.

[Here Mr. B. read—

“One letter of credence may serve for two Ministers, sent at the same time, if they are both of the same order. Sometimes, on the contrary, one Minister has several letters of credence; this happens when he is sent to several sovereigns, or to one sovereign, in different qualities. The Ministers sent to Switzerland are often charged with more than four different letters of credence. So it is with those sent to the Emperor, to the circles of the Empire,” &c.]—*Martens*.

It is the same with the letter of *full powers*. There must be as many as there are sovereigns

to be treated with; the exchange of these must be mutual and simultaneous; each Minister judges for himself the full powers of the other. Yet our intended Ministers to Panama are nominated to the “nations” in mass; the nomination will govern the commissions, and the commissions will govern the letters of credence and of full power. By consequence, the credentials and the full power will be presented to a Congress—to an *organised body*—and passed upon by it. Peradventure a committee will be raised upon their papers; the Congress vote upon them; and the President announce the result; a clerk write it down; and a door-keeper let them in! What a process for the reception of Ambassadors! Not so at Ghent. There the Ministers of the two powers met upon the footing of equality. The full powers of each were mutually and simultaneously exchanged: (*See the Preamble to the Treaty.*) Each judged for himself; and from this equality, and this right of reciprocal decision upon each other's powers, there can be no exception except in one single case—a case which did exist at Ghent, and does not exist at Panama; it is the case of a negotiation opened under the auspices of a *Mediator*, to whom the full powers of each may, and ought to be, submitted, if they disagree. Our Ministers then must be accredited to *each* of the nations supposed to be at Panama; they must bear full powers to treat with *each* of their Plenipotentiaries; these again must have full powers to treat with *each* other, and with *us*; and these powers must be reciprocally exchanged all around. So it was at Ghent, so at Utrecht, so at Westphalia, so at every Congress of Plenipotentiaries for the negotiation of treaties of which history gives us any account.

The sovereignty of these nations not being, in point of fact, at Panama, the next inquiry is, whether it is there by representation?

This is a thing possible. Ministers, known to the law of nations, *may* represent the sovereignty of their nations at any point upon the globe. They *may* come from the four quarters of the globe and form a diplomatic assembly. But is this Congress at Panama an assembly of that description? I maintain that it is not; and in maintenance of this opinion, I bring up and enforce again, the circumstance of their creation under treaties; their limited privileges, and their dependence for these upon treaty stipulations. I will then go forward and show what this Congress is. In doing this, I shall follow the example of the Senator from Rhode Island, (Mr. ROBBINS,) and improve a little upon it. He looks to the treaties which create this Congress, for its character, and he leaves out of view all that has appeared in reviews, proclamations, and newspaper essays. In this he acts like a Senator—like a statesman. I shall imitate him in looking to the same treaties, and in leaving out of view so much of the President's Message, and so much of the same loose authorities, as differ in any degree from



the terms of the treaties; and I shall improve upon his example, by adding to the catalogue of excluded authorities, so much of the Secretary's communications, and of the letters of the Colombian, Mexican, and Guatemalan Ministers, as vary from the same standard. In the absence of these treaties, this message and these communications and letters would have governed us: for they would then have been the highest evidence in our possession; but, in the presence of the treaties, they are useless: for they signify nothing when they agree with them, and must be rejected when they differ from them. And here, Mr. President, I shall admit that I was put upon this track by the words of wisdom which fell, in the first days of this debate, from that venerable Senator from North Carolina, (Mr. MACOON,) who, I am proud to say, permits me to call him *friend*, and am still prouder to know, has been the friend of me and mine through four generations. This venerable Senator said, that this Confederation of Spanish American States, and their Congress at Panama, was to *them* what the Confederation and Congress of the Revolution was to *us*. This remark struck me, and set my mind at work. I determined to analyze the two Confederations, and their Congresses, and I have done so. The result is in my hand, [showing a paper,] and I derive confidence in its correctness from seeing that the Senator from Maine, (Mr. HOLMES,) and the Senator from New Jersey, (Mr. DICKERSON,) without any concert with me, or even knowing what I was about, have, in part, made the same analysis, and arrived at the same conclusions. Their labors not only fortify me in the strength of my position, but relieve me from a part of my own: for, after what they have said, I will do no more in this place, than to read from my notes the analysis which I have made of these Congresses and Confederations, respectively.

[Mr. B. then read from his notes, as arranged under appropriate heads, and in parallel columns, the analysis which he had made of the object of the two Confederacies, and the powers and duties of their respective Congresses.]

Mr. President, I must be permitted to take a closer view of this Congress, under its character of an organized body. It is admitted, on all hands, that it is to have organization and rules. Now, this is a thing impossible in a diplomatic assembly. The Ministers in such an assembly represent sovereign powers, and cannot be organized. We had as well undertake to organize Kings and nations. The Ministers can have no rules of action, for their personal deportment, but those manners of gentlemen which they are presumed to possess; and none for their official conduct but such as are contained in their own instructions. The idea of organization is fatal to the diplomatic pretensions of this assembly. What is organization? It is the disposition of the parts to make them subservient to each other; it subjects the whole to one will, or to one principle of action; it reduces this Congress

to a unit, to one party, deciding for all, with one voice. A diplomatic assembly, on the contrary, is multiplicate; it consists of as many parties as there are powers represented, each independent of the other, each making the best bargain he can for his own side. How will our Ministers act with such a body? They must either become parts of its organization, or not become parts of it. Take either horn of the dilemma. In the first event, they make us parties to the confederacy, and bind us by the voice of the body. Well, it is agreed, all round, that this will never do. Then, try the other. Let our Ministers stand off, become no part of the body, but undertake to negotiate with it. This is impossible: for the Congress is not sovereign to receive Ministers, nor can it, like our Congress of the Confederation, appoint Ministers to treat with them, nor treat as *two* parties: for the body will contain five parties, with only one voice, and we shall present a single party, with two voices. One will have to speak through a President or Secretary; the other, in their own persons. In short, Mr. President, the simple idea of organization explodes every pretension of this Congress to the character of diplomatic.

Yes, sir, "Deputies to a Congress" is the invitation and the acceptance. It is in vain to endeavor to cover it up with the drapery of names and titles. The thing stands before you stripped and naked, in all the nudity, if not in all the beauty, of a Grecian statue. Words can neither hide nor alter it. It is a thing unknown to the constitution, and the constitutional question then recurs upon it. Can the President and Senate send the nominees, as public Ministers, to this Congress, upon the Isthmus of Panama? I contend that they cannot; neither to it, because it is not sovereign to receive them, nor diplomatic to negotiate with them; nor *into* it, for that would make our envoys a part of its organization, and ourselves parties to the Confederacy; nor to act *with* it, because the Congress will act as an organized body, and our Deputies as individuals. It is in vain to affect indifference towards these difficulties. They are seen and felt by those who conduct this affair; and the almost utter impossibility of managing it, is betrayed by the Babylonian confusion of terms and ideas which pervade their councils. Behold the effects of this confusion. The Deputies to the Congress are called by all sorts of titles—Agents, Commissioners, Representatives, Plenipotentiaries, and finally promoted, in the President's nomination, to Envoys Extraordinary, and Ministers Plenipotentiary! The Congress itself is equally the subject of a vague and contradictory nomenclature—sometimes a Congress; sometimes a Diplomatic Assembly, without power to negotiate treaties; once a Cortes; now an advising Council; then a Committee of Public Safety; and at last swelled by the President into an Assembly of nations! Then, as to the powers and duties of the Deputies themselves, what contradictions upon these points! Some-

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times they are to be giving advice; sometimes to be consulting; sometimes negotiating treaties, and sometimes not; sometimes they are to "*settle*" the unsettled points in the laws of nations; yea, sir, to give the law to the two Americas, and Europe, Asia, and Africa to boot! Then they are to do nothing in the world but make bows and compliments, and walk in and out, like our territorial Delegates, and exhibit the extraordinary spectacle of lobby Ministers Plenipotentiary and lobby Envoys Extraordinary! And, with all these high and low pretensions, they are to be worked through this chamber upon the plea of an innocent operation; upon the recommendation of an old woman's medicine, that they will do no harm if they do no good.

I trust, Mr. President, that it is now made clear, that the proposed mission is unknown to the law of nations, and to the constitution of this country; but, as it may, nevertheless, be sent, it becomes my duty to proceed upon that supposition, to follow it to Panama, and to show that its objects are, in some respects, already accomplished, in others, unattainable, in others, inexpedient—that we have nothing to expect from it but a heavy item of expense, some unpleasant apologies to foreign nations, the risk of getting into difficulties with the new republics themselves; and that every desirable and attainable object would be better accomplished by an agent or commissioner, without diplomatic character, with little expense to our treasury, and without harm to our constitution.

Pursuing these Ministers to Panama, we have next to inquire, what are the objects of interest to us, which are expected to be accomplished by them at that place?

The President, in his Message, has enumerated several, at the head of which stands the item of commerce. Upon this subject, he expects to establish: 1st. The doctrine, that free ships make free goods. 2d. The restrictions of reason upon the extent of blockades. 3d. The "*consentaneous*" adoption of principles of maritime neutrality. 4th. The principles of a liberal commercial intercourse.

The first question which presents itself, Mr. President, is one of power in the Congress to treat of these subjects at all. It seems to me that it has no power to touch them. They belong to the "foreign relations" of the confederates, and these it is forbidden to the Congress to "affect in any manner," as shown in the analysis of its powers. The article to that effect is the same in every treaty. It is article 17th, in the treaty between Colombia and Chili; 6th, in that of Colombia and Peru; 18th, in that of Colombia and Guatemala; and 17th, in that of Colombia and Mexico. It is in these words:

"This compact of union, league, and confederation, shall not affect, in any manner, the exercise of the national sovereignty of the contracting parties, in regard to their laws, and the establishment

and form of their respective Governments, nor in regard to their relations with other Governments."

Here are three restrictions upon the powers of the Congress:

1. Against interfering with the municipal laws of the confederates.

2. Against interfering with their forms of government.

3. Against interfering with their foreign relations.

The last of these restrictions ought to prevent the Congress from touching the commercial relations of the United States, with any or all of the Confederate powers. But, admitting that this restriction had not been imposed, would it then have been the part of a wise and prudent policy to open the subject of our commercial relations in the Congress of these Confederate powers? I think not, sir, for many reasons: and, first, because we have already so nearly all that we want from each of these powers respectively, that it would be impolitic to put to stake the much which we have in possession, for the chance of gaining the little which we have not yet acquired. With Colombia we have a treaty, ratified by ourselves about sixty days ago, containing every stipulation which we can possibly ask for: the flag to cover the property; free ships to make free goods; the trade of the two countries to be placed on the liberal basis of perfect equality and reciprocity; liberty of conscience, and the right of worship, allowed to our citizens, and the privilege secured to them of being buried in decent and suitable places; and, finally, the crowning stipulation, that, if a better treaty should be made with any other power, all the advantages of it shall immediately accrue to the United States, in the same manner as if it had been made with us. This is certainly covering the whole ground for which we went into the mission to Europe, at the close of the Revolutionary war—it is gaining all that can be got from Colombia. Then for Guatemala. We have a treaty with her, ratified likewise by ourselves, at the present session, in which every point is secured which is contained in the one with Colombia, even to the stipulation for contingent advantages, in the formation of better treaties with other powers. With Buenos Ayres and Chili we had no treaties, positively signed, at the date of our last advices; but our Ministers were in negotiation; and, on the 28th of September last, our Government was officially informed that these negotiations were probably concluded, and treaties signed by that time, which would contain every stipulation which had been put into the treaty with Colombia.—(See Mr. Poinsett's letter of that date.) With Peru we have neither treaty nor negotiation; but it is understood that a *Chargé d'Affaires* will soon be sent to that country, and, unless he goes to make a commercial treaty, I presume he will go *uncharged* with any affairs at all. Mexico, alone, remains to be considered. With her we have interchanged Ministers, and

from our Plenipotentiary "*near*" her Government, we are informed, under date of the 18th and 28th of September last, that every article in the proposed treaty was adjusted to his entire satisfaction, *save one*, and that *one* a proposition, on the part of Mexico, to reserve the right of granting some commercial privileges with the other American States, formerly Spanish, which would not be granted to other powers. The last intelligence from our Minister, left the negotiation hanging upon this single point, with a peremptory declaration, on his part, that he would never agree to it. Since then, the Message of the Mexican President to his Congress has been seen and read by us all, in which he speaks of this treaty being so nearly concluded as to enable him to say that it would be laid before Congress in a few days! Then, take this matter as you will, in the first place, it is highly probable that we have, before this time, treaties with all these powers, containing every stipulation that we wish. Certain it is, that we have such with Colombia and Guatemala, *two* out of *three* of the powers that have invited us to Panama. It is almost certain that we have the same from Mexico, the remaining power that invited us—highly probable that we have just what we want from Buenos Ayres and Chili; and, if we have not, it would seem like a sleeveless errand to go to Panama to get it, because Chili has not invited us to meet her there! And Buenos Ayres has, herself, refused to go there! Neither has Peru invited us, nor can it be presumed that, without the expectation of seeing us at Panama, either this power or Chili has given full powers to their Plenipotentiaries to treat with us at that place. Shall we, then, voluntarily incur the hazard of losing all that we have secured from these nations separately, by opening fresh negotiations with them in a body? Shall we run the risk of seeing Colombia, Guatemala, Peru, Chili, and the rest of them inoculated with this Mexican doctrine—a doctrine so well calculated to become infectious, of granting to each other peculiar privileges to the exclusion of us? Is not a bird in the hand worth two in the bush? Are not four birds in the hand worth the feather of one in the bush?

A third object to be accomplished by this Congress, is one indistinctly seen in the message—the establishment of a league of Republics to counterpoise the Holy Alliance of Europe. The honor of being at its head, seems to be tendered to us. This, Mr. President, is a most seductive object. It addresses itself to the generous and heroic feelings of our entire population. The brilliant honor of presiding in such a league would cast a new splendor over our administration; but it is the business of those who are appointed by the constitution to counsel the President about it, to take counsel themselves rather from their judgments, than from illusions of glory, and the ardent feelings of young men.

The despots of Europe have confederated for

the purpose of putting down liberty. They have embodied one million five hundred thousand bayonets to march against the banner of freedom wherever it can be seen. One of the *protégés* of this alliance is engaged in war with the Spanish American States, formerly his colonies; and these States have confederated against *him*, as we confederated against *our* ancient master, in the war of the Revolution. For the success of all their objects in this Confederation, they have the prayers and the best wishes of all the friends of liberty throughout the globe. But I cannot advise the President to enter into this Confederation as a partner, neither upon the open sign, nor in the secret articles. I cannot approve even of a dormant partnership in this business. Not that I am determined, in no event, to make common cause with these new Republics, or any one of them, in a contest with the combined powers of Europe; but because I would be the judge of the occasion which required me to do so, and free to act as I thought proper, when the occasion occurred. The occasion *may* occur, Mr. President. We have the Holy Allies in front and in rear, in Europe and in Asia. They may conceive it to be the shortest way of accomplishing their final object, to extinguish, at once, the light of liberty in the New World; and the subjugation of the new Republics might be the first step in that great work. In such an event, I would not wait for the dastardly privilege of being the last to be devoured. I would go into the contest from the beginning; I would grapple the universal enemy while he was engaged with my neighbor; I would go into the conflict not as ally, but as principal; not with regulated quotas and starveling contingents, but with all our power by land and sea. I would go into it to conquer or to perish. I would stake life and property, and household gods, upon the issue. I would fight the battle of desperation and of death. It would be the last struggle for human liberty, and should be worthy of the cause; great in the triumph, and greater still in the fall!

The relations of Hayti with the American States, (these United States inclusive,) and the rights of Africans in *this* hemisphere, are two other questions to be "*determined*" at the Isthmus. We learn this from a paragraph in the letter of Mr. Salazar, the Colombian Minister. I will read it, for in matters of this kind we cannot be too exact:

#### THE PARAGRAPH.

"On what basis the relations of Hayti, and of other parts of our hemisphere that shall hereafter be in like circumstances, are to be placed, is a question simple at first view, but attended with serious difficulties when closely examined. These arise from the different manner of regarding Africans, and from their different rights in Hayti, the United States, and in other American States. This question will be determined at the Isthmus, and, if possible, a uniform rule of conduct adopted in re

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gard to it, or those modifications that may be demanded by circumstances."

Our policy towards Hayti, the old San Domingo, has been fixed, Mr. President, for three and thirty years. We trade with her, but no diplomatic relations have been established between us. We purchase coffee from her and pay her for it; but we interchange no Consuls or Ministers. We receive no mulatto Consuls, or black Ambassadors from her. And why? Because the peace of eleven States in this Union will not permit the fruits of a successful negro insurrection to be exhibited among them. It will not permit black Consuls and Ambassadors to establish themselves in our cities, and to parade through our country, and give their fellow blacks in the United States, proof in hand of the honors which await them, for a like successful effort on their part. It will not permit the fact to be seen, and told, that for the murder of their masters and mistresses, they are to find *friends* among the white people of these United States. No, Mr. President, this is a question which has been *determined* HERE for three and thirty years; one which has never been open for discussion, at home or abroad, either under the Presidency of General Washington, of the first Mr. Adams, of Mr. Jefferson, Mr. Madison, or Mr. Monroe. It is one which cannot be discussed in *this* chamber on *this* day; and shall we go to Panama to discuss it?—I take it in the mildest supposed character of this Congress—shall we go there to *advise* and *consult* in council about it? Who are to advise and sit in judgment upon it? Five nations who have already put the black man upon an equality with the white, not only in their constitutions, but in real life; five nations who have at this moment (at least some of them) black generals in their armies and mulatto senators in their Congresses.

But gentlemen say it is only for advice and consultation. I answer, that the question is not debatable, neither at home nor abroad; not even in this chamber, where we have sincere advocates and unprejudiced judges. They say they only go to consult! I say, there are questions not debatable. I would not debate whether my withholding the advice which the President requires upon this occasion, is the effect of a "*faction and unprincipled opposition*;" I would not debate whether my slave is my property; and I would not go to Panama to "*determine the rights of Hayti and of Africans*" in these United States. Mr. President, I do repeat, that this is a question which ought not to be agitated by us, neither at home nor abroad. The intentions of the agitators are wholly immaterial. The consequences to us will be the same, whether their designs be charitable or wicked. Knaves can do nothing without dupes. The wicked would be harmless, were it not for the good men who become their associates and instruments. Who made the massacre of San Domingo? Was it not the

society of "*Les Amis des Noirs*" in Paris? And who composed that society? I answer, every thing human, in the shape of virtue and of vice, from *Lafayette* and the *Abbé Gregoire*, down to *Marat* and *Anacharsis Klost*. The speeches, the writings, and the doctrines of this society, carried to San Domingo by emissaries, with "religion in their mouths, hell in their hearts, and torches in their hands," produced that revolt, the horrors of which yet harrow up the soul, and freeze the blood—that revolt, in which the sleeping babe was massacred in its cradle—in which the husband and the father, tied to his own gate, beheld, by the light of his burning house, the violation of his wife—saw his daughters led off—and received, as a relief from his horrors, the blow of the axe which scattered his brains upon the ground.

The last, and the *main* argument, relied upon by the President, for sending this mission, is the fact of *invitation* to do so. This he calls the "*decisive inducement*." The President is particular in the use of words; we are permitted, therefore, to say, that all other reasons for sending the mission, were *persuasive* only, until the weight of this invitation *decided* his mind. I felt the full force of this decisive reason myself. Invitations to mere individuals are often embarrassing, and cannot be accepted without inconveniences or impropriety, nor refused without giving offence. With nations, the acceptance or decline of respectful invitations, often become an affair of State, full of responsibilities. When then I saw it stated in the newspapers, that we had been "*invited*," I felt the delicacy of the position in which our Government was placed. When the annual Message was read, and I heard from authority, that the invitation had been *given and accepted*, and that Ministers would be *commissioned*, I was ready to give my advice in favor of sending them, with a protest against the President's right to send them without such advice. When the Message of the 26th December was read, and the fact of the invitation placed in high relief, as the *decisive cause*, I responded to the sentiment, and said to the senator next to me, "*THAT is the strongest of all the reasons.*" But what was my astonishment, on coming to look among the appended documents, to find out the real circumstances of this invitation! I found them to be entirely different from what I had supposed them to be, and from what the newspapers and the President's Messages had induced me to believe them to be. But as this ground is delicate, sir, I must trust nothing to memory, nor even to my notes. Let the President's organ speak, the report of the Secretary of State, which accompanied the Message of December 26th.

[Here the report was read.]

This report, Mr. President, put a new face upon the character of the invitation. I found it had not been peremptory, not of a kind to impose an obligation of acceptance, nor so un-

derstood by either of the parties. I found that our Government had been sounded with the utmost delicacy, in an unofficial conversation, to know whether it would be agreeable to itself to receive the invitation, and that the President had met the overture with the utmost propriety, with friendly professions, and with a stipulation for preliminaries which gave him the vantage ground, and enabled him to accept the invitation, eventually, with safety and honor, or to decline it without offence. Thus far the conduct of both parties must receive an unqualified approbation. But what next? Why, sir, on the second, third, and fourteenth of November ensuing, the preliminaries not being complied with, the invitation is delivered in form; and, on the thirtieth of the same month, it is accepted "*at once*."—Six months roll away, and at the end of that time, the Ministers send in their answers, the conditions not complied with, and our Government accepts "*at once*." Call this an invitation! Sir, it is but little short of the reverse. We are invited provisionally—we make conditions;—the conditions are not complied with; but the invitation is extended in form. What is this but a dispensation to stay away? The non-compliance with the conditions is the *substantive* answer, and the formal invitation to attend, *nevertheless, &c.*, is the compliment to grace the repulse. Let any gentleman make the case his own. He is invited to a party, either for business or pleasure—he makes conditions—he must know four things, or not come. The four things are told him, but the inviters say, "*we shall be glad to see you, sir!*"—What is this but leave of absence? Sir, I am not joking about this matter. I do believe that our attendance, at the forepart of this session, will be embarrassing and disobliging to the Confederates, and that, if they wish us to come at all, it is not immediately. I will give another reason for this inference, in the proper place. At present it is sufficient to know the fact, that these Confederates are determined upon the invasion of Cuba and Porto Rico, and that we are going to Panama to advise against it.

From this view of the invitation, it is clear that it was not of a character to lay us under an obligation to accept it—that we might have declined it without offence, and that our final acceptance was more *our* invitation than theirs. But there are two other aspects under which this invitation is still to be looked at. In the first place, it comes from a *part* only of the Confederates—*three out of five*—Colombia, Mexico, and Guatemala; Peru and Chili not having joined in giving it. In the next place, our invitation is by word of mouth, or, at least, by a note. We go, if we go at all, upon a parole request, whereas all the other powers go upon treaties. They create the office by treaties, before they fill it, and in this they do right. Their constitutions are copied from ours, and from *their* example our Government should learn, if not from *our* arguments, that this office

should be *created* before it is filled. But, on these points, as on many others, I limit myself to stating the proposition, and refer the Senate to the unanswered and irrefutable arguments of gentlemen who have preceded me—the *Senators* Macon, Randolph, Hayne, Woodbury, Dickerson, Van Buren, White, Holmes, Berrien, and him whose arguments we have, but unhappily not his presence—Tazewell: these have broke the way before me, overturned all obstacles, silenced all voices, and left to me the easy task of following in the rear—a file closer in the column which traverses the field without resistance.

I think, Mr. President, that enough has now been said, surely enough until some part of it is refuted—to justify the Senate in withholding its advice to the President to send these Ministers to the Congress at Panama. I admit that Congress to be a wise measure for the Spanish American States, as our Congress was a wise one for us in 1778; but it is impossible for us to advise this mission in any of the various forms, or under any of the names and colors, in which it has been presented to us. We cannot send Ministers *into* the Congress: for that would make us a party to it; we cannot send them *to it*: for they are not sovereign to receive them. We cannot send them *to act with it*: for that is an organized body, and our Ministers will be individual. We cannot send them to hang about it, and talk, and remit home accounts of consultations: for they are accredited to *nations*, and cannot sink to the condition of unofficial agents and lobby Ministers.

But the mission is said to be popular. Certainly it is exhibited under forms to catch the public favor. Religion, Liberty, and Commerce! Such are the banners under which it goes forth! Banners well calculated to draw after them a crowd of followers from every walk and station in life. The prospect of a political crusade against the "*bigotry and oppression*" of the Roman Catholic Church, must warm the hearts and command the benedictions of every religious sect in the Union. Even the Unitarians, who are not Christians, must be struck with joy, and filled with delight, at beholding it. The institution of a Sacred Alliance of Republics, to counterpoise the Holy Alliance of Kings, must fire the souls of all the votaries of Liberty. The generous Republicans of the West must be particularly inflamed by it. Then comes Commerce, with her golden train, to excite the cupidity and to fire the avarice of the trading districts. New Orleans, Charleston, Baltimore, Philadelphia, New York, and Boston, must see their riches suspended upon the issue of this mission to the Isthmus. In a word, every section of the country, mountain, valley, and sea-coast; every class of citizens, and all denominations of religious sects, must find something in it to suit their particular taste, and to accommodate their individual wishes. It will be to no purpose that *Prudence*, in the form of a Senatorial minority, shall come

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limping on behind, and endeavoring to prove that all these expectations are vain and illusory. Cold calculation will avail nothing against the fascinations of Religion, Liberty, and Commerce. Two of these objects alone, so far back as three hundred years ago, precipitated the Old upon the New World: fired the souls of Cortes, Pizarro, and their followers; overturned the thrones of Montezuma and the Incas, and lighted up a flame in which the "Children of the Sun" were consumed like stubble. What, then, may not be expected, when, to the inspirations and the glitter of these two objects, are added the noble impulsions and the brilliant attractions of Liberty? But great as are all these causes of popular excitement, the success and popularity of the mission is not allowed to rest exclusively upon them. The terrors of denunciation are superadded to the charms of seduction. Those who cannot be won by caresses, must be subdued by menace. A body co-ordinate, and bodies not co-ordinate, have been set in motion against the Senate. Loud clamors beset our walls. The cry of "*faction!*" "*opposition!*" "*unprincipled!*" resound through the streets. Woe to the Senator that hesitates! Woe to him that refuses his advice! Woe to him that asks for information before he gives it! To withhold advice, is to deny confidence—to deny confidence, is to oppose the Administration—to oppose the Administration, is to commit a crime of the greatest enormity; for the instant punishment of which, the air itself seems to be alive and filled with avenging spirits.

I have now finished, Mr. President, what I had to say. I do not mean to recapitulate. I am no enemy to the new Republics to the South. On the contrary, I have watched their progress with all the solicitude of a partisan and all the enthusiasm of a devotee, from the first impulsion at *Buenos Ayres*, in 1806, and at *Dolores*, in 1808, down to the "*crowning mercy*" at *Ayacucho*, in 1824. I saw with pride and joy the old Castilian character emerging from the cloud under which it had been hid for three hundred years. When first on this floor, in 1821-'2, I voted for the recognition of the new Republics—I gave my vote with a heart swelling with joy for the greatness of the event, and with gratitude to God that he had made me a witness to see, and an instrument to aid it. Whether these Republics shall be able to maintain their independence, and the free form of their Governments, is not for me to say, nor is the decision of *that* question material to my decision of *this*. I wish them to be free and Republican, and I shall act upon the presumption that they are to be so. I wish for their friendship and commerce, and, to obtain these advantages, I have advised the sending of Ministers to all the States, no matter how young and unimportant, and would now advise an Agent or Commissioner to be sent to Panama. I will not despair of these young Republics. Under all their disadvantages, they have done wonders. The bursting of the chains which

bound them to Old Spain, and the adoption of our form of Government, is a stupendous effort for a people sunk for ages in civil and religious despotism. BOLIVAR, VICTORIA, BRAVO, and a host of others, have deserved well of the human race. They have fixed the regards and the hopes of the civilized world. I trust that these hopes will not be disappointed; but in this age of miracles, when events succeed each other with so much rapidity; when the diadem has been seen to sparkle on the brow of the Republican General, it is not for me to hail any man as WASHINGTON until he shall have been canonized by the seal of death.

[Mr. RANDOLPH concluded the debate in a very long speech, not reported for the reason before stated: after which, late in the night of the 14th, the final questions were taken on this subject, as stated in the preceding record of Executive Proceedings.\*]

FRIDAY, March 17.

*Executive Proceedings—Reinstatement of Mr. Randolph's Motion, Made and Withdrawn in Secret Session.*

On motion of Mr. RANDOLPH:

*Ordered*, That the following motion, submitted by Mr. RANDOLPH, on the 21st February, and withdrawn on the 22d February, be inserted on the Journal:

*Resolved*, That the Senate having, on the 15th day of February, passed the following resolutions:

"*Resolved*, That, upon the question whether the United States shall be represented in the Congress of Panama, the Senate ought to act with open doors, unless it shall appear that the publication of documents, necessary to be referred to in debate, will be prejudicial to existing negotiations.

"*Resolved*, That the President be respectfully requested to inform the Senate, whether such objection exists to the publication of the documents communicated by the Executive or any portion of them; and, if so, to specify the parts, the publication of which would, for that reason, be objectionable."

To which the President returned the following Message in answer, viz:

\* This terminated the debate at midnight. The vote was taken, and resulted in favor of the mission—24 to 19. The yeas were: Messrs. Barton, Bell, Boulligny, Chambers, Chase, Clayton, Edwards, Harrison, Hendricks, Johnson of Kentucky, Johnston of Louisiana, Knight, Lloyd, Marks, Mills, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Vandyke, Willey. The nays: Messrs. Benton, Berrien, Branch, Chandler, Cobb, Dickerson, Eaton, Findlay, Hayne, Holmes, Kane, King, Macon, Randolph, Rowan, Van Buren, White, Williams, Woodbury.

The mission being sanctioned, the confirmation of the Ministers (Mr. John Sergeant, Mr. Richard Clark Anderson, and the Secretary of Legation, Mr. William B. Rochester) followed of course, but without further consequence. The Congress, itself, never met; and our deputies, after waiting until one of them died, (Mr. Anderson, at Carthage,) were relieved of their appointment by lapse of time.

"WASHINGTON, February 16, 1826.

"To the Senate of the United States:

"In answer to the two resolutions of the Senate of the 15th instant, marked (Executive,) and which I have received, I state, respectfully, that all the communications from me to the Senate, relating to the Congress at Panama, have been made, like all other communications on Executive business, in *confidence*, and most of them in compliance with a resolution of the Senate requesting them confidentially. Believing that the established usage of free confidential communications, between the Executive and the Senate, ought, for the public interest, to be preserved unimpaired, I deem it to be my indispensable duty to leave to the Senate itself the decision of a question, involving a departure, hitherto, so far as I am informed, without example, from that usage, and upon the motives for which, not being informed of them, I do not feel myself competent to decide.

"JOHN QUINCY ADAMS."

*Resolved*, That the Senate cannot, consistently with a due sense of its constitutional rights and duties, proceed, under the circumstances of the case, to a further consideration of the question, whether or not it be expedient for the United States to send a mission to the Congress at Panama.

On motion, by Mr. RANDOLPH:

*Ordered*, That the following motion made by Mr. RANDOLPH, on the 14th March, and afterwards withdrawn, be entered on the Journal:

*Resolved*, That the States of South Carolina and Alabama, being unrepresented, in consequence of the death of JOHN GAILLARD, and of HENRY CHAMBERS; and the State of Virginia being also unrepresented, by the unavoidable absence of LITTLETON WALLER TAZEWELL; and the State of Mississippi, by the vote that THOMAS B. REED, one of the Senators, be excused from voting, he not having had time to make up his opinion, so as to be prepared to vote understandingly on the question: The Senate cannot, on a question involving the dignity and neutrality of the United States, and the fundamental principles of their union, and the peace and security of a great subdivision of the Confederacy, proceed to consider the nominations, until the States shall be more fully represented.

On motion, by Mr. HAYNE:

*Ordered*, That the injunction of secrecy be removed from the foregoing proceedings, and that the Secretary cause the same to be published.

Extracts from the Journal.

Attest, WALTER LOWRIE, *Secretary*.

MONDAY, MARCH 20.

*Intrusive Establishment of Lawless Whites on Indian Reservation at Lake Washington, State of Mississippi.*

Mr. REED rose to offer a resolution, which, as it embraced some principles on which he believed the Senate had not hitherto been called upon to act, he begged leave to submit a few remarks by way of explanation.

Mr. R. said it struck him that this resolution which he was about to offer to the Senate,

involved some principles in which several of the States of this Union had a joint, and something like an equal concern. It related to the Indians, and to the light in which they were to be viewed by this Government. It was well known, Mr. R. said, to every member of this honorable body, that there were several States of the Union, a great portion of whose territory is in the occupancy of the aboriginal inhabitants; and he presumed it was already known to the Senate that more than half of the State of Mississippi, which he had the honor, in part, to represent, is still in the occupation of the Indian tribes—the Choctaw and the Chickasaw nations. In regard to the action of the State laws on these people, there never had been any difficulty, nor was it ever sought on the part of the State of Mississippi, to extend its jurisdiction over them; but there were evils growing out of their situation in this territory, which required the consideration of this Government. Mr. R. said he did not mean to call the attention of the Senate to the actual condition of these people who inhabit the territory within the limits of the State; his object was to call the serious consideration of the Senate to the condition of our own citizens, who, after having committed crimes, or contracted debts, locate themselves amongst these Indians, and consider themselves as beyond the jurisdiction of our laws. He would recount to the Senate some singular facts, which, he believed, to the same extent, existed in no other State of the Union, and which he thought would go far to show that something, if within the competency of this Government, ought to be done on this subject.

There is, said Mr. R., in the territorial limits of the State of Mississippi, and near to the white settlements, one of the most beautiful regions in the world, called Lake Washington. The territory surrounding it is most beautiful, the soil is rich, and this lake and territory are both situated within the Indian territory. A man, notorious for the commission of various crimes in the State of Tennessee, has fled for refuge within the jurisdiction of these Indians, and has subject to his jurisdiction, by a kind of feudal sovereignty, fifty or a hundred persons, living on this lake, who know no other authority but his own. These persons are exempted from the jurisdiction of the laws of the Union, and cannot be reached by the laws of the State of Mississippi. This was a state of things, Mr. R. said, the Senate would easily perceive, was not to be endured, and if there was any thing within the competency of the Senate to remedy the evil, it was time it should be done. There was another fact which had fallen within his observation. A man emigrated from Georgia twenty years ago, and settled amongst the Choctaw Indians. He acquired property to a large amount, and he recently died without leaving any legitimate heirs in the place where he lived and died. His brother came on to claim the property; he applied to counsel for

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an opinion; it was given, and decided that the State laws did not extend to the case, and that no remedy whatever could be provided, to put him in possession of the property. Even some of the officers of Government, now resident in the Choctaw nation, are considered as entirely beyond the reach of the laws of the United States, or the State laws. It had occurred to him, therefore, that it was a duty incumbent on him to call this matter to the consideration of the competent authority of the United States. He repeated, it was not sought on the part of the State of Mississippi, or by her Senators in this House, to enforce the action of the laws on the Indians themselves; they did not claim to consider them as subject to their operation. The Indian tribes have laws and traditional usages of their own, and are entitled to the patronage and protection of the General Government; and, Mr. R. observed, the Indian rights are sufficiently secured, and they themselves are protected in the enjoyment of the lands in which they are located—but they have no right to constitute their country into an asylum for debtors and criminals, from every State of the Union, and to afford them protection. He remarked to the Senate, and particularly to those gentlemen who were not acquainted with this subject, having no Indian territory within their limits, that the Indian territory in Mississippi affords a complete sanctuary for debtors and vagabonds and criminals from every part of the Union. This state of things ought not to be endured, and he intended to offer a resolution, which had in view the taking the sense of this body, whether it was competent for them to extend to our own citizens, who happen to be within the Indian territory, the process of the courts of the United States, in order that justice might be done. At present, as far as he had been able to investigate the subject, it was the opinion of some able jurists on this point, that process does not extend to persons residing in the Indian territory—and he would wish to bring to the consideration of the Legislative authority of the Union, the question, whether it is competent for us to extend our civil and criminal process; or whether it is one of the appendages—one of these people's rights, as sovereigns, to afford a sanctuary to vagabonds from every part of the Union, and who are of no service, but detrimental to the Indians themselves.

There was, Mr. R. said, another question involved in this matter, which he was very anxious to bring before the consideration of the proper authority of the Union. How far it is within the competency of the State to extend the action of its own laws, without the aid of the United States, to persons thus circumstanced, is a question somewhat novel, and has never been decided. Being forcibly struck with the importance of this question to the States within whose territorial limits the Indian territory is situated, at the last session of the Legislature of Mississippi, a proposition was

made to extend the civil power of their courts to their own citizens who had contracted debts within the State, and had fled to this savage sanctuary: the matter was debated for many days, and it was at last decided that there existed no power in the State to extend the action of its laws in the manner which was sought by the proposition before the Legislature. Mr. R. said his own opinion on this point was, that it is in the power of the State to act within its own territorial limits, so far as to serve its own civil process, and the action of its laws, on citizens who may have contracted obligations. The State decided otherwise, and said it was a matter for the General Government; therefore, if there was any remedy on this subject to be obtained, it was to be at the hands of the General Government, and not by force of any competent authority in the State Government. The resolution he was about to submit, Mr. R. said, would go to investigate this point, in which he considered rights of high importance to be involved—his proposition would go to inquire how far it is competent for the State alone, by its own authority and power, without the aid of the General Government, to act within their own territory, on their own citizens, who had contracted obligations amongst the whites, and then had fled to the Indian territories. On the subject of this resolution, Mr. R. begged the particular attention of the gentlemen from Georgia and Alabama. One question which was involved, would be, to see how far it is in the competence of any State situated as his or theirs were, to act on this subject, without invoking the aid of the General Government. If, upon investigation, it was found that the States have no such competency by their individual efforts, to attain the aid he had in view, then the resolution contemplates the matter in another point of view, how far it is competent for this Government to concede its assent to such States, that they exercise the right of sovereignty for such purposes of justice. Mr. R. said he did not intend to enter into a full discussion of this matter, which he regarded as highly important to those States whose territories were similarly situated with those of Mississippi.

In regard to these Indians, Mr. R. said it was unnecessary now to discuss their actual posture in our social and political order: it had been a matter of debate from the first establishment of this Government up to the present time. Their actual condition in our political order has not yet been settled—whether they are considered as an independent people, entirely free from the action of our legislation and laws, or whether they are to be considered as independent *sub modo* only, are questions which have not yet been decided. How far their rights to the soil are plenary or imperfect, or under what modifications they hold the right of occupancy, is still a question on which no determinate opinions have yet been formed. On one question, Mr. R. said, his opinion, from an observa-



tion of fifteen years, was settled beyond possible change—it was, that the prospect of civilizing these people by the actions of surrounding communities, is illusive. It is a dream, which never can be realized. He was entirely persuaded that, so long as the tribes of Indians, within any State of the Union, were exempted from the action of our laws, they never would consent to remove from the territory they occupy. He thought it was a fair and correct policy, instead of making vain and illusive efforts to civilize them, and include them in our political institutions, to remove them to the borders of our territories, where the real character of the savage man can be benefited. If this policy cannot be pursued, the tribes of Indians in the State of Mississippi will not last for twenty years longer. The seeds of national dissolution are sown; they are operating with extraordinary rapidity, and the period is not far distant when these nations must undergo an entire dissolution. But, until our legislation can, in some form or other, be brought to act on these people, or those resident amongst them, they never will consent to abandon their lands. So soon as our laws can reach those abandoned citizens, who settle amongst them and become as savage as the Indians themselves, a powerful motive for their continuance will be removed. It is the first step in a system of removal; it is the first step in a system tending to a change of residence.

Mr. REED concluded by submitting the following resolution:

“Resolved, That the Committee on the Judiciary be instructed to inquire into the expediency of authorizing by law the courts of the United States to issue process, both civil and criminal, and to cause the same to be executed against persons resident upon land, occupied by the Indians, within the territorial limits of any State. And that the same committee be further instructed to inquire, whether there is any mode by which the United States can yield their assent, that any State may exercise the power of issuing civil and criminal process against persons so resident upon lands, occupied by Indians, within its limits; and whether such assent, on the part of the United States, be necessary to the exercise of this power, on the part of any individual State.”

*General Appropriation Bill—Cumberland Road.*

Mr. RANDOLPH rose, and said, I do not rise to detain the Senate, or to give a history of this very extraordinary road, or of the compact between the State of Ohio, or rather Territory, and the United States, out of which this appropriation for roads grew. I will only say, that that subject, when before Congress, now about twenty-four years ago, if I don't forget—was referred to the Committee of Ways and Means, of which I was a member. There was a gentleman from the State of Ohio attending here in behalf of that State—I do not now recollect whether he was a territorial Delegate—I think he was not—he has since been Governor

of Ohio. The committee did not choose to come into the views of that gentleman in many respects, and, among others, in reference to the boundaries of the State of Ohio—extending them beyond the Miami of the Lake—they did not give him a *carte blanche* to make the bill what he pleased. The Committee of Ways and Means were so extremely—what shall I say! so extremely impracticable by this agent, that they were discharged from the farther consideration of the subject, and the question was referred to another committee. That committee brought in a bill under which Ohio came into the Union, and that bill was the work almost exclusively of the Representative of what is now the State of Ohio, with some little modifications on the part of the then Secretary of the Treasury, who had this road a good deal at heart, and through whose interest, instead of going through Clarksburg, as was contended for by the Representative from that district of country, it was carried through Pennsylvania, to Wheeling, only going through a small portion of Virginia, called the county of Brooke, hardly as wide as the eastern shore of Virginia—extending between the western boundary of Pennsylvania and the river Ohio, which, in that particular reach of its course, is nearly due south, and almost parallel to the line that separates Pennsylvania on the west from Virginia. The bill passed as modified by the agent of Ohio, giving to her a greater disposable area of arable land, than any other State in this Union possesses—giving her a superficies of land fit for cultivation, surpassing the other two States of Indiana and Illinois, and cutting off from the Territory of Michigan all that fine country which lies beyond the Miami of the Lake, to suit the designs of this agent, and those of another gentleman, then at the head of the Post Office Department, (Gideon Granger,) who I heard declare with his own lips, that he would make a State there, which should countervail “*the great State of Virginia*,” and he has done it. I did not rise to give this history, but to vindicate my consistency—it is by that consistency, for although the truth may be blamed, she never can be shamed—it is to that consistency that I owe my place here—that it is that consistency, which, according as the several parties of this country have vibrated one way or another, has brought me into collision with, or in support of them. I hope the Senate will pardon this egotism—it is due to myself to release me from the imputation of any “bad faith” in respect to the State of Ohio—I disclaim it—I declare, before God and man, that I never did—though the record will speak to the contrary—yet the record don't tell the truth—I never did vote for the admission of any one new State into the Union from the time that I took my seat in Congress—and, so help me God, I never will. Ohio was the first State which was admitted after I took my seat in Congress—in the Journal you will find my name, but you will find it as one of the Committee on Ways and Means to whom the sub-

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ject was in the first instance referred. You will not find it on the committee, to which, the Committee on Ways and Means being discharged from the subject, it was referred, because the Committee on Ways and Means were not sufficiently practicable to the views of this—(whether a territorial delegate or lobby member, it don't value *that*!) this diplomatic agent on the part of Ohio. I did not vote against the admission of the State of Ohio into the Union, not only because there was no occasion for me to throw myself into the ranks of opposition against my best friends, with whom I was united in the closest bonds of intimacy, when that opposition could not avail, but because I was unable to attend on the final question. If I had been in the House, I should have voted against the State of Ohio being admitted into the Union, but I could not get to the House from indisposition, when the question was taken on the passage of the bill. From that day to this (and I recollect that I was once in a minority of two with an old sedition-law and black-cockade Federalist on some of them) I voted against the admission of any new State into the Union—I won't be positive, for I have not hunted the Journal—my last vote I think was in reference to the admission of the State of Missouri into the Union, which seems to excite the risibility of my friend from that State, (Mr. BENTON,) and the facts are these: As Ohio was the first State admitted, so was Missouri the last—the facts are these—I don't see any one here who can corroborate them, but my then colleague, W. S. ABERNETHY can, so can twenty, thirty, fifty gentlemen in the House of Representatives. The facts were these: On the night that that bill had its last vote in the other House, my colleague was a new member—I declared publicly and openly that in case that bill should pass, with the amendment then proposed, unless another amendment should succeed, which did not succeed—I declared conditionally, that I should move for a reconsideration of the vote—myself and my colleague, who, with another gentleman whom I shall not refer to, though near me, (Mr. MAHON,) were the only persons whom I have heard of, belonging to the Southern interest, who determined to have no compromise at all on this subject. They determined to cavil on the *nineteenth* part of a hair in a matter of sheer right—touching the dearest interests—the life-blood of the Southern States. The House was exhausted—a gentleman fainted in front of the chair, and tumbled on the ground—in this state of things, my colleague asked me whether it would not do as well to put off the motion till to-morrow, (for he was in ill health and much fatigued.) I said I could not agree to that till I had taken the opinion of the court in the last resort. After that question had eventuated, as I foresaw it might, I rose in my place, and asked of the Speaker whether it was in order to move a reconsideration of the vote—he said that it was. Sir, I am stating facts of more importance to

the civil history of this country than the battle which took place not far from this—he said it was. I then asked him—(to relieve my colleague, who had just taken his seat for the first time that session) whether it would be in order to move the reconsideration of the vote on the next day. He said something to this effect: Surely the gentleman knows the rules of the House too well not to know that it will be in order at any time during the sitting to-morrow, the next day—I replied I thought I did; but I wanted to make assurance doubly sure—to have the opinion of the tribunal in the last resort. I then agreed—to accommodate my colleague, in the state of exhaustion in which the House then was—I agreed to suspend my motion for reconsideration, and we adjourned. The next morning, before either House met, I learned—no matter how—no matter from whom or for what consideration—that it was in contemplation that this clock, which is hardly ever in order, and the clock in the other House, which is not in a better condition—should somehow disagree—that the Speaker should not take his seat in the House till the President had taken his seat here, and then, that when I went into the House to make my motion, I was to be told that the Chair regretted very much that the Clerk had gone off with the bill—that it was not in their possession, and the case was irreparable—and yet I recollect very well, when we applied to the Secretary of State for a parchment roll of an act which had not been duly enrolled—two sections were left out by the carelessness of the clerks and of the Committee of Enrolment—that act was, by the House of Representatives, in which it originated, procured from the archives of the Department of State, and put on the statute books, as it passed, not as it was on the roll—and enrolled anew. It was the act for the relief of the captors of the *Mirboha* and *Missouda*. As soon as I understood this, sir, I went to the Speaker myself, and told him that I must have my vote for reconsideration that day—I can only say that I inferred—not from what he *told* me—that my information was correct—I came off immediately to this House—it wanted about twenty minutes of the time when the Senate was to meet—I saw that most respectable man whom we have just lost, and begged to speak with him in private. We retired to a committee room, and to prevent intrusion we locked the door—I told him of the conspiracy laid to defeat me of my constitutional right to move a reconsideration—(though I think it a dangerous rule, and always voted against its being put on the rules at all—believing that, to prevent tampering and collusion, the vote to reconsider ought to be taken instantly—yet, sir, as it was there, I had a right to make the motion)—I told this gentleman that he might, by taking the chair of the Senate sooner than the true time, lend himself unconsciously to this conspiracy against my constitutional rights as a member of the other House from the

State of Virginia. I spoke, sir, to a man of honor and a gentleman, and it is unnecessary to say that he did not take the chair till the proper hour arrived. As soon as that hour arrived, we left the committee room together: I went on to the House of Representatives, and found them in session, and the Clerk reading the Journal—meanwhile, there had been runners through the long passage, which was then made of plank, I think, between the two Houses, hunting for Mr. Gaillard—where is he? he is not to be found. The House of Representatives having organized itself—when I came in from the door of the Senate I found the Clerk reading the Journal—the moment after he had finished it I made the motion, and was seconded by my colleague, Mr. AROHER, to whom I could appeal—not that my testimony wants evidence—I should like to see the man who would question it on a matter of fact—this fact is well remembered—a lady would as soon forget her wedding day as I forget this. The motion to reconsider was opposed—it was a debatable question, and the Speaker stated something this way—“that it was not for him to give any orders—the Clerk knew his duty.” The Clerk went more than once—my impression is, that he went more than twice—I could take my oath, and so I believe could Mr. AROHER, that he made two efforts, and came back under my eye, like a mouse under the eye of a cat, with the engrossed bill in his hand—his bread was at stake—at last he, with that pace, and countenance, and manner, which only conscious guilt can inspire, went off, his poverty, not his will, consenting, and, before the debate was finished, back he comes with the bill from the Senate which had then become a law, before it was decided whether they would reconsider it at my motion or not, which motion nailed the bill to the table until it should have been disposed of. I mention this fact to show what unprincipled men, “*feeling power and forgetting right*,” are capable of doing even in the presiding chair of a deliberative Assembly—yet, notorious as these facts are, so anxious was one side of that House to cover up their defection; such was the anxiety of the other to get Missouri in on any conditions, that this thing was hushed up, just as the suspension of the HABEAS CORPUS was hushed up.

The bill was passed through the forms of law—Missouri was admitted into the Union contrary to the constitution, as much so as if I had voted the other way in the first instance, and the Speaker had ordered the Clerk to put my name with the AYES in the Journal when I had voted no—because, sir, agreeably to the Constitution of the United States, every member has a right to his vote under the forms of the House, whether these forms are wise or foolish, and my colleague and myself were ousted out of our right to reconsider, for which I would not have taken all the land within the State of Missouri.

Having given this account of this transaction,

permit me to say that, without voting upon any principle, as it is called, upon the subject of internal improvement at all, without calling that matter into question—without calling into question any “plighted faith,” real or imaginary—unless I allowed myself to vote inconsistently with the manner in which I have voted from 1802 ’8—I remember the time, because it was the only session that I lived next door to the Secretary of the Navy; and I was a fellow lodger with a gentleman whom I now see in his place—I may be mistaken, but (whether mistaken or not in the date) I know that few men in Congress stood higher than I did at the time with the then administration; but I could not stomach this thing—I would not vote for it. I saw the old States playing what I thought a most ruinous and pernicious game, and what, in the end, it has proved to be—giving away to the States, north of the Ohio, immunities and privileges, and making concessions, which they must sooner or later rue—which they rue at this time, which I then rued, and shall forever rue—even till “the day of judgment,” which some of us may wish to be with a stay of execution. I have no design, as you may perceive, sir, on the Presidency, nor on any other office which is in the Presidential gift, or in that of “the nation,” whose power has increased, is increasing, and never will, I fear—although it ought to be, and I wish it could be, diminished. I have persevered in this course, *ab ovo usque ad mala*—from the beginning of the feast—I fear I must say, to the beginning of the famine. I shall continue to do so, whether I commit a breach of faith or not. I shall vote on this as on any other question—if you can find an instance in which I have nodded, then will I agree that, with abler and better men, I too have slumbered on my post—*aliquando optimus dormitat*.

Having said thus much on this bill, there is one more subject on which I will touch, and sit down. In the National Intelligencer, last Friday, I saw a piece signed IMPRANSUS; that is, if I have not forgotten my Latin, a man that wants his dinner. This dinnerless gentleman is doing what the printers of the public laws in Kentucky and elsewhere are doing every day—lauding to the skies certain gentlemen, and libelling others; you, in particular, sir. This hungry man, who stands so much in need of a dinner—there is no man’s appetite so sharp as his who is to eat at another’s expense—who was the cynic, sir? I think it was Diogenes—who, being asked what wine he liked best, answered, that which he drank at another’s expense. I am not of that opinion at all. I like no dinners but such as I pay for out of my own pocket. *De gustibus non est disputandum*, even between cynics, sir. So there are none so sharp set as those who mean to eat out of the public larder. I should like to know how long it is since that respectable journal (for so I have always considered it to be) has lent itself—this is the first instance that I have seen—and to an

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insinuation of the grossest kind and degree to the honor of this body, and of its presiding officer. I am not at all surprised to see it in the "KENTUCKY REPORTER," or other papers of that stamp; but I am astonished to see that respectable journal lend itself to an insinuation derogatory to the body whose public servant it is. Nor, when I say this, do I mean to hold out any thing like a rod *in terrorem*—a threat. They who wish to stand well need not deprecate my opposition, as was proved in the case of the Clerk of the House of Representatives.

And now, sir, with regard to those gentlemen who feed their horses out of the public crib, who never plant any corn, there is no country under the sun where they dine so sumptuously at the public cost as in this. There is no country under the sun where the inferior officers are paid so largely, whether absolutely or relatively, or with such punctuality as here; where even the superintendence of the Cumberland road is a better office under the General Government, and has annexed to it a larger salary, than is allowed to the Governor of Ohio. I have said thus much, though I should have consulted my own ease and health by keeping silence. There is one member in this body who ought to be obliged to me, if no one else is, for the part that I have taken of late: for, sir, from father to son, I have proved the best conductor, the best *imaginable* conductor, of the inimical properties of that dynasty, and if the gentleman to whom I allude enjoys a temporary respite, he will have been indebted to me—not that he owes me any thanks—not that I have done what I have done with a view to relieve him—if he enjoys a temporary respite from the abuse of the satellites of the administration, from the abuse of those who are paid with the people's money to abuse us their representatives, who are paid with *our* money, (the money of the States,) for abusing *us*—I say, sir, if that gentleman enjoys any respite, he will have been indebted to me for it; but he owes me no thanks, I can assure him—it was from no such motive that I have endeavored to take the bull by the horns—*bull* by the *horns*, did I say? No, sir: another, and very different animal, by the tail.

Mr. HARRISON said he could not at this moment, from indisposition, go into the discussion of the subject, in relation to the Cumberland road; he regretted this the less, as he found those who had spoken on the subject, had avoided bringing into the discussion any thing relating to the constitutional power of Congress on this subject. Mr. H. said, if he understood the gentleman from Virginia rightly, he had alluded to the gift of great immunities and advantages to the State of Ohio. If this was the fact of the case, that State had greatly misunderstood the subject. It was a matter of complaint against those who formed that compact; the people of that country all conceive the immunities to have been on the side of the General Government. The single concession by the State that it would not tax the lands of the

United States, was worth tenfold all those advantages that any of the States north-west of the Ohio ever received from the General Government.

The Legislatures of the States, through which this road is to pass, have, Mr. H. said, given up the right to the United States to make it; not only that, they have requested it. One of the objections which had been urged against internal improvements is, the right of the United States to make a road without the consent of the States. Another objection is, that, to appropriate the money of the United States to internal improvement, is not one of the enumerated powers of Congress. The respectable Western States had come before Congress; those sovereigns came as suppliants, and asked Congress to lend on this two per cent. fund, which they considered as sufficient security, a sufficient sum of money to accomplish this purpose. The question is, is it an important purpose? Mr. H. said he considered the United States would be more benefited by the construction of this road than any of the States which it was intended immediately to benefit. What is it, Mr. H. asked, that binds and connects this great Union together? Is it a string of words and sentences, called the constitution? or was it mutual interest? It would be an insult to this body to say, such was the fact. When had interest ever produced the continuation of an alliance, when that alliance was not secured by the affection and attachment of the parties to that alliance? Whenever the time shall come that these United States are connected together by no other bond than interest, they will then have tottered to their foundation. What is it then that connects them together? It is the affection that exists between the individual citizens of the different States; it is the attachment that the people of Ohio feel for those of Georgia and Maine; that attachment which was manifested, and which led the people of Ohio to step forward at once, in support of what? Not their immediate rights, but the rights of their seafaring fellow-citizens in Massachusetts. Were they deficient in their duty on that occasion? He trusted no gentleman would say so. Mr. H. then proceeded to consider the question, of how this appropriation would tend to increase this principle of affection, which he contended and insisted was the bond of this Union; and argued that, by facilitating the means of intercourse, it would bring the long absent daughter to the embraces of her mother, and the son to receive the blessing of his father. Mr. H. said he had seen a great deal of human misery, but he had never seen it in any shape which touched his heart in a greater degree, than in the emigrants to the western country before the Cumberland road was constructed. A farmer, with a fine family of children, finding a difficulty of procuring subsistence in some of the old States, and looking forward to their future welfare, determines to go to the western country, where land is cheap; and he sets out with a little cart, and two poor

horses, to carry his wife and half a dozen children; and, not knowing the distance, or the road accurately, his slender means are soon exhausted; the horses are unable to carry any farther all that is dear to him; he is broken down by sickness, and his children cry around him for that relief which he is unable to afford them; and, when he arrives at the place of his destination, he is separated forever from all those relations whom he may have left behind. But now, by the means Congress has given to level the mountains, and causeway the swamps, this poor man turns his eyes once more to the place of his nativity—he recollects once more the mother whom he has left; he returns, and is once more blessed by her embrace. This is no story, sir; it may be daily realized. By traveling along the same Cumberland road, you may see persons in the situation I have described, who are offering their prayers to Heaven, and calling for blessings on the heads of those who have again enabled an affectionate daughter to be restored to a tender mother. Such are the facilities which this road gives, has given, and will give, that, aided by the genius of Fulton, the most imbecile man in St. Louis may hope to travel comfortably once more to behold those who gave him birth. It is on the confidence, reverence, and attachment, with which the people of the United States look on Congress, that the prosperity of this Union depends. The word Congress—not the Congress of Panama—is an important word with the people of the United States. This very road is called by the people, not the Cumberland road, but the Congress road; and they remember with gratitude and veneration, the venerable body of men who first assumed that appellation; and the men, women, and children, that travel along that road, offer their prayers to Heaven for that body who afforded them this facility.

Mr. H. thought it unnecessary to detain the Senate longer on the subject, and would say no more.

Mr. RANDOLPH again rose, and said, the gentleman is mistaken if he supposes that I begrudge the people of Ohio the lands within the body of Ohio. I wish that every new State had all the lands within the State, that, in the shape of Receiverships and other ways, these States might not be brought under the influence of this ten miles square. In other words, I wish that all the patronage of the Land Office was in the hands of the individual States, and not in the hands of the General Government. I am the friend of State rights, and will cut down the patronage of this General Government, which has increased, is increasing, and must be diminished, or we the States shall be not only "shorn of our beams" sir, but "abolished quite." Having cleared the ground, so far, let me state to the gentleman that such is the difference between the measure meted out to the new States and to the old ones, that in consequence of my having missed the post this morning, I shall have to-morrow to send a servant two hundred

miles; and why? because my attorney in fact, as well as counsel at law, resides near Halifax Court-house, eighteen miles beyond my own dwelling, and about two hundred miles from Washington; and, so far from my possessing any of those facilities which the gentleman describes, I cannot get an answer to a letter from Halifax Court-house under three weeks, even if there be no miscarriage of the mail. Ever since I have been in Congress, gentlemen from Lexington, Kentucky, could get answers to their letters sooner than I could to mine. I shall then be told it is owing to the great Serbonian Bog between Neabsco and Ohappawamsick; but to pass that bog, the mail from Richmond to this place takes only a day and a night, even when the navigation prevents its being avoided by the steamboat—but then, sir, when it comes from Richmond to my county, which is only one hundred miles—it is only ninety-five miles from Petersburg—I cannot get an answer to a letter sometimes under a month: and it is only in consequence of a cross post from Fredericksburg to Farmville, that I can get an answer in the time that I do. I intended to have mentioned this to the gentlemen from Kentucky; if we were only one-half as well off in post offices and post roads as that querulous country, we should make our bow and be thankful. Such is not the fact—I can send to Savannah—from Savannah to Boston, and get back an answer sooner than I sometimes can from here to my own home—for any miscarriage adds a week to the delay. The Postmaster General—I don't attribute any blame to him—has very kindly promised me "to rectify the procedure;" and how! By a mail twice a week, which will enable me then to get an answer in one-half the time—say in ten days on an average—and I shall then almost consider myself as half a freeman on the subject of post offices and post roads—I shall feel almost, not altogether, as if I did not belong to one of the "Negro States." Now, sir, the only difference between the gentleman from Ohio and myself is this—and it is vital—that gentleman and myself differ fundamentally and totally, and did differ when we first took our seats in Congress—he as a Delegate from the Territory north-west of the river Ohio, I as a member of the other House from the State of Virginia; he was an open, zealous, frank supporter of the sedition law and black-cockade Administration; and I was as zealous, frank, and open an opponent of the black-cockade and sedition law Administration. We differ fundamentally and totally—we never can agree about measures or about men—I do not mean to dictate to the gentleman—let us agree to differ as gentlemen ought to do, especially natives of the same State, who are antipodes to each other in politics. He, I acknowledge, just now, the ZENITH, and I the NADIR; but unless there is something false in the philosophy of the schools, in the course of time even these will change their places. I shall not here enter into a lecture on the precession of the equinoxes, much less on the figure

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of the earth—I don't know whether it is established by the *modern Philosophers* that it is hollow at the South pole as well as at the North—but I don't mean to enter into that question, sir, because I don't mean to enter into the earth, as long as I can keep above ground. It is the height of folly in us, as it would be in any other nation under the sun, to acquire by conquest, whether by the *conquista* of Blackstone, which he says means *purchase* or conquest by force of arms, territories—in order that these territories may govern us instead of our governing them; this I deem to be madness or folly, not wisdom; my doctrines are not, I know, at all orthodox, and why? I go on the principle that the first duty of a nation is to itself; aye, and of a man, too, sir—if Old England was to admit representatives, black or white, from her fifty millions of Hindoos according to a certain ratio, in the Commons House of Parliament—or even from Scotland and Ireland, they would govern Old England, instead of Old England ruling them—and if as an Englishman, I would never consent to be governed by Scotland or Ireland, *a fortiori*, I would not submit to be ruled by Canada, by the East Indies, or by New Holland—Virginia acted very foolishly when she followed this *ignis fatuus* of equality of rights to her own undoing. I say *ignis fatuus*: for, whenever it leads to her advantage, it is not allowed to be the true guide. For is not the smallest State, as a State, on a footing with the largest here? What, then, do you tell me about a representation *per capita* in the Federal Government? I don't care a pinch of snuff whether your representation be *per capita*, or whether your districts, like every sheet of paper in this quire, consists of an equal number of square inches or square lines. You may make your districts thus equal in superficial area or in population—you may provide, that, if a woman in the chequer A, be brought to bed of twins, that one of the children shall be removed into chequer B, to preserve *equality* of representation—for any uncertainty is fatal in the certain sciences—a miss is as good as a mile. These notions of applying geometry and arithmetic to government is the Government of *Lagado*—it is *Laputan*—it is Lilliputian—mathematics have no more relation to government than chemistry. You might as well undertake to construct a Government upon chemical principles for the use of man.

I don't pretend to be more learned on the subjects of the partition of this Territory than the gentleman from Ohio—but Congress did reserve the power of carving five or three States out of the lands on the other side of the river Ohio—did reserve to itself the power, and in the act defining the boundaries of Ohio, gave to that State territories which ought to be part of the State of Michigan—I mean beyond the Miami of the Lake. I don't mean to enter into a squabble, whether it is your land or my land: this is what I mean, sir—Congress, after having passed this act, which, by cession of the State of Virginia, did what? It said, as long as 80,000

men shall remain in Pennsylvania, in the county of Washington, they shall send one Representative here: and, as an integral part of Pennsylvania, shall send their proportion of her two Senators—let only these men strike their tents, and go in quality of emigrants, and set down in one of those political diagrams called States, beyond the Ohio, and they shall not only send a member, whether they have the requisite number or not, (each State shall have at least one Representative,) but they shall send two Senators here—to counterpoise Pennsylvania or New York. That is, that 80,000 men in one place have rights that the very same men have not in another place; upon the principle that the rights of men depend upon the question of numbers, and nothing else—which is manifestly contradictory and absurd. Did they do no more than that? I am a matter-of-fact man, sir, and abhor abstractions in politics, and in every thing else, except pure mathematics and metaphysics; which last I have long since given up to the boarding schools for young ladies—but did not this same State of Missouri, which is not even now lawfully in the Union, which by its one member would have controlled the whole thirty-seven of New York—did not this State of Missouri, which is not now constitutionally one of the United States, make the Chief Magistrate of the Union by the vote of one single man in the other House? Does the gentleman consider this as nothing? Is this the nothing given to the western country? Aye, sir; is it not by this *nothing* given to that country, that the voice of the majority of the people of the United States has been suffocated—strangled—and counter-voiled; and are we, because we are not in favor of it, to hold our peace? It would be prudent in us to do so, perhaps gentlemen think it would be very civil in us to do so, and no doubt it would be more agreeable to them—but I shall not do so.

I have no hesitation in saying, that never were people so wild as we have been in the pursuit of this *ignis fatuus*, not only across the Ohio, but beyond the Mississippi—beyond Aurora and the Ganges—to barter away their *independence* to the control of one man, and the State of Virginia stood looking on in helpless impotence—there was only one man in her delegation who was capable of voting for the present incumbent (Mr. Newron)—verily he shall have his reward—but not from us—from *him*. Yes, sir, we twenty helpless individuals stood by to see the single Delegate from Missouri countervail the vote of the ancient and renowned Commonwealth, whose true Representatives we were. I speak of the fact, that one Delegate was put in one scale, and Virginia, with her two and twenty members, in the other—we kicked the beam, sir—we were not merely balanced, but we kicked the beam—for the Missouri vote settled the question. Is this nothing? Is this a correct statement, or is it the romance of love-sick girls—or boys—"all for love, or the world well lost"—the

ascendency of old Virginia destroyed—I speak not of her ascendency abroad, but at home—not over other States, but over her own unquestioned territory—in Virginia herself, all for love of our Western brethren, of liberty and equality—the liberty of being dictated to by them, not in the election of President, but upon our own soil—of being upon a footing of equality with Missouri, upon this very Cumberland road, and on the subject of our black population, involving not only all our property, but what money cannot buy. I don't want to have an ascendency over our brethren beyond the Ohio, or north of the river Potomac, or—east, I was going to say, of the western boundary of Pennsylvania—yes,—I do want to get back to the country of Youghiogheny. I owe my seat here to no favor, or affection from any man under the sun—and the moment it is to be kept by conciliating opinions that come in direct collision with my own, unless they come in a shape that I am bound in duty and in honor to respect; in that of the Legislature and people whom I represent—I am ready to resign it. I do not set up the claim of acting independently of instructions, to what I know to be the sentiments of the State—far from it—I think any man here who does go against what he knows to be the sentiments of the State which he represents, is in the situation of a Foreign Minister who goes against what he knows to be the opinions of his court, and violates the instructions which he has received; and he who deliberately violates such instructions, I consider to be ripe—did I say?—rotten rather, and fit for every mischief. Suppose, what is not to be supposed, an extreme case, a real case of *conscience*—let him resign.

Having used some pretty plain language on this subject, all that I have now to say is, that that sort of equality which gives to thirty thousand people on one of these diagrams, power in this House equal to the largest of the good old United States—which gives to them an influence in the first instance over the Presidential election in a ratio treble of that population in the Electoral College, and, in a certain contingency, equal power with the largest and oldest of the original States, is an equality that I do not understand. I would not concede it to them if their population was equal to ours; so far, at least, as relates to the intermeddling with the internal affairs of Virginia: and why? No Government can be safe for Virginia, that is not a Government of persons having a common feeling—a common interest—a common right with Virginia; and this holds good in every Government under the sun. Therefore it was that the British Parliament was not the proper Representative of this country—therefore it is, that the saints and fanatics are not the proper Representatives of Jamaica; and if Jamaica was strong enough, she would tell them so.

This is not a Court of Law where we are to plead, but it is a deliberative Assembly—I

throw out these imperfect hints, and if my opinion is worth nothing, it may serve to excite a train of thought in others, and elicit that which is of great value. We should cease to be a deliberative Assembly if we did not deliberate—if we were logicians in the schools it would be otherwise—if, when a man comes into the world to converse with mankind, he were to put on the armor of the schools and courts of law—to deal in syllogisms and enthymemes—and *rebutters* and *surrebutters*—to set a price upon his tobacco by syllogism, and court his wife by a dilemma of marriage or single blessedness, he would only show himself to be a learned fool. It will not do to bring into a parliamentary body the technical habits of a profession that is more remarkable for sharpening the perception, than for enlarging and liberalizing the understanding. A good deal has been said, sir, about the dignity of this Assembly; about its being improper to talk vernacular English here—we must speak so super-fine and mincing that nobody but an *accomplished* lady from a “female seminary” can understand us. Is that the case in the House of Commons, or even in the House of Peers? Again, sir, on the subject of talking beside the question; can you conceive any question more foreign to the business of the House of Peers than a contested election in the House of Commons? Any thing more foreign to the subject here, be it what it may, than a contested election in the other House? Yet, sir, on what subject did Lord Chatham make that great speech in which he put down Lord Mansfield, who, endeavoring to shelter himself under forms and technicalities, the refuge of the bar, declared that the House could not entertain the question on the expulsion of Wilkes? It was on that occasion that Chatham made that great speech—in which he did only not call him, to his face, a rogue: for, after praising two other great luminaries of the law, for their integrity, and legal science, and attainments, he said, I vow, my Lords, I think the noble Lord [Mansfield] equals them both *in abilities*. When you know how much depends on the tone—the eye—the finger—though a man may not be disciplined to put out his hand and place it on his breast—“here's my hand, and here's my heart; I never will deceive you;”—it is self-evident that he could not have called him a dishonest man in terms more forcibly than by this innuendo.

Again, sir—have not assertions, not the most delicate, been made on the floor of both Houses of Parliament, in the House of Peers, with all its robes and wigs, and every thing else? Was it not broadly insinuated, over and over again, that there was an adulterous intercourse between the Dowager Princess of Wales and the Earl of Bute, the favorite? Is this very delicate? Is this very sentimental and refined? And was there not, when I was last in England, a Bishop obliged to fly from the country for the commission of a crime not to be named amongst Christians? And would not this have



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been investigated and tried in open court? Courts of law are sometimes very coarse things; they have to call spades, spades, to try tough cases, whomsoever's fastidious delicacy they may offend. So are legislative bodies coarse things—it is there where the passions of men are brought into collision; and when the strife is for empire, that if you expect to carry on the intercourse as you would at a meeting of ladies and gentlemen, where everybody is in the most amiable disposition possible, and where nothing in the slightest degree indelicate can be endured, you are grossly mistaken—this body must probe every thing that comes before it, in the same manner that the House of Peers in England probes every thing, without consulting the delicate sensibilities of young misses of either sex, or going to the circulating library, or the Sorrows of Werter, or Rousseau's *Nouvelle Heloise*, where the most abominable sentiments are covered up in the most elegant yet voluptuous language, or one of Anacreon Moore's songs, which the poor little things sing, and do not know that they are singing all the time—what cannot be named. The refinement of a nation is in language always in the inverse ratio of the purity of their manners. Did not the House of Commons compel Sir John Trevor to put the question himself whether or not he had been guilty of bribery, and corruption, as their Speaker? They would not let the Clerk put it—he was reduced to propound it himself; and when it had voted that he was guilty, they expelled him, and he had to walk out, and make his humble bow of thanks that he was not kicked out.

I have said these things to put myself *rectus in curia* here—we don't come here to pay compliments to one another—we don't come here to blink any question—to call bribery and corruption "influence"—we don't come here to call military despotism "a vigor beyond the law"—we come here to do our duty as men, to be the faithful Representatives of the States that send us here. Having done that, sir, according to my views of the true interests of Virginia, I shall feel indifferent myself whether I fall under the censure of any other State, or subdivision of States, beyond a certain mystical line, a parallel of latitude, not having a common feeling and common interest with me, and which I will not trust to legislate within the limits of the State of Virginia on any subject, unless they can show me the grant in this blue book, [holding up the constitution,] and when they can, I cannot gainsay it—but never, under pretence of districting the States, or any other, however plausible, shall they put their hands within the limits of that State, and do any one act that by the terms of the constitution they cannot now lawfully do.

After some explanatory conversation between Messrs. HOLMES and RANDOLPH, the question was taken on the motion to strike out the appropriation, and decided in the negative, by yeas and nays, as follows:

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YEAS.—Messrs. Berrien, Chandler, Clayton, Cobb, Dickerson, Findlay, Hayne, King, Macon, Randolph, Sanford, Van Buren, White, Willey, and Woodbury—15.

NAYS.—Messrs. Barton, Benton, Chase, Eaton, Edwards, Harrison, Hendricks, Holmes, Johnson of Kentucky, Johnston of Louisiana, Kane, Knight, Marks, Mills, Noble, Reeds, Robbins, Ruggles, Seymour, Smith, Thomas.—21.

Mr. COBB next moved to strike out the item of \$750 for repairs made on the Cumberland Road in 1825; which motion was lost.

FRIDAY, MARCH 24.

Case of Col. Delassus, Ex-Spanish Governor of West Florida.

Mr. BENTON rose, to ask leave, of which he gave notice on Wednesday, to bring in a bill for the relief of Don Carlos Dehault Delassus. This individual, said Mr. B., was the king of Spain's Governor in Upper Louisiana, at the time of the cession of that province to the United States, and upon the cessation of his functions there, he was transferred to Baton Rouge, and became the King's Governor over the province of West Florida. It is known to everybody that we claimed this province, as far as the Rio Perdido, under the terms of the Louisiana treaty, and that the King of Spain denied our right and refused to give it up. In this posture of demand and refusal, the question continued until the night of the 28d of September, 1810, when the American inhabitants of the west end of the province rose in arms against the Spanish authorities, captured the fort in which they resided, killed some, and made prisoners of the others, including the Governor. The Federal Government of the United States had nothing to do with this affair. It excited nobody to insurrection, nor seized any thing by the hands of its agents; but the Federal Governor of Louisiana was hard by, and after a decent interval, the fort and its armament, with the province and its population, was delivered up to him; and, after a further interval, the captors, for their trouble and expenses in the premises, were gratified with some seventy or eighty thousand dollars out of the Treasury of the United States. In the mean time the prisoners, by order of the Governor of Louisiana, were set at liberty: but the sum of thirteen hundred dollars, taken by the captors out of the Governor's private desk, and reclaimed by him as his own, and the further sum of six thousand dollars, taken out of the military chest, and reclaimed by him as the King's money, (sent to him for the payment of salaries, his own salary included;) these sums, I say, were not given up, but applied by the captors to the payment of their own men, and the Governor was told to look to the United States for his indemnification.

These, Mr. President, are the facts upon which is founded the application for leave,



which I now make, to bring in "*A Bill for the Relief of Don Carlos Dehault Delassus.*"

With the bill, I shall present his petition, supported by vouchers; and, at the proper time, I shall, by a reference to these, prove the truth of every word of the statement which I have made. But my bill differs from his petition in the measure of relief which it proposes to give. The petitioner prays for the restoration of his own money, with interest, and for so much of the King's as would pay the arrearages of his salary to the day of his capture. He prays for this, and for nothing more nor less. He has not framed his petition, like a suitor in chancery, with a double aspect, looking to *this*, if he cannot get *that*. But, as a good chancellor always grants relief according to the case made out, and not according to the suitor's prayer, so we, in my opinion, should give to the petitioner in this case the relief to which he is entitled, whether he has asked it or not; with this impression, I have drawn the bill for the whole amount taken, and conceive it our duty to make the entire restitution to be just as clear, as is the petitioner's right to receive it. In the first place, we are bound to restore it, because we had no right to take it. We claimed West Florida, as far as the Rio Perdido, under the terms of the Louisiana treaty; but we claimed no money under that treaty, neither the King's nor his subjects'; but the money of both was taken, and taken by those who took the province, and we have made their act our own, and assumed all its liabilities, by receiving the fruits of their enterprise, and rewarding them for what they did. In the next place, the petitioner has a right to receive back all the money that was taken from his possession, both the King's and his own. His right to his own cannot be questioned; his right to receive the King's is just as clear. He was the King's officer, and had the keeping of the money for the purpose of paying certain salaries. The King trusted him, and it is not for us to say that he is unworthy of trust. Besides, the laws are in force, and payment can be coerced if refused. But the great moral ground is, that, having no right to take this money, we have none to retain it; that it is our duty to restore it, and the duty of others to account for its disbursement.

I think, Mr. President, that these considerations are sufficient, not only to procure me leave to introduce the bill, but to ensure its final passage. But, if other considerations are necessary, they may be found in the character of the petitioner, his former state, and present condition, and in the injustice with which all his countrymen of Louisiana have been treated by these United States. The Ex-Governor Delassus is as irreproachable a man in private and public life, as any that lives. He has been Governor, with almost unlimited powers, over a province larger than the kingdom of Europe, and he is now the cultivator of a farm of some twenty acres in the suburb of the town which

was the capital of his dominion. He had more, or rather ought to have more, than twenty acres. The King of Spain gave him some thousands; but the United States Government picked a hole in his title papers, and have fought him out of his land for five and twenty years. He is one of that body of Frenchmen who were transferred to us with the cession of Louisiana, and who have seen the young grow old, and the old die; who have seen a quarter of a century roll over their heads, and a generation pass from the earth; while they have stood at your doors vain petitioners for the land which they received from the bounty of a King, and which they are in danger of losing from the cupidity of a Republic.

The leave being granted, Mr. B. introduced the bill; which was twice read and referred.

THURSDAY, March 30. .

*Executive Powers—Right of the President to Institute a New Mission without the Advice and Consent of the Senate.*

On motion of Mr. BRANCH, the Senate then proceeded to the consideration of the resolution submitted by him, protesting against the competency of the President of the United States to have appointed Ministers to the Congress of Panama, without the advice and consent of the Senate.

Mr. BRANCH rose, and said: Under the impression that the first and most important duty I owe to the State that sent me here, is to preserve inviolate, and to transmit to posterity unimpaired, the form of Government under which we live, I have believed it to be my duty to submit, for the consideration of the Senate, the resolution which has been read. My opinion is, that a Representative has performed but a part of his duty, and perhaps the least part, when he discharges the ordinary duties of legislation as delegated to him by the constitution. I feel, said Mr. B., that we have an important task to execute in resisting the encroachment of ambition on the constitutional powers of this body, whether they be open or covert.

The principle embraced by the resolution is so plain, in itself, so obvious in its nature, as to need no argument on my part, to make it plainer. I should conceive it to be an insult to the understanding of the Senate to attempt such an argument. The resolution asserts a constitutional principle. Yes, sir, a fundamental principle, which is, doubtless, properly appreciated by this body.

It may be, however, proper for me to call the attention of the Senate to the opening message of the President of the United States, at the commencement of the present session, and to his Executive communication to the Senate, of the 26th December last. For it will be found that, in these communications, he has assumed a power, and asserted a right, which I boldly contend he does not possess: and in

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making this denial, I feel confident that I am sustained by the Constitution of the United States. In the opening message he says: "Among the measures which have been suggested to them by the new relations of one another, resulting from the recent changes in their condition, is that of assembling at the Isthmus of Panama a Congress, at which each of them should be represented, to deliberate upon subjects important to the welfare of all. The Republics of Colombia, of Mexico, and of Central America, have already deputed Plenipotentiaries to such a meeting, and they have invited the United States to be also represented there by their Ministers. The invitation has been accepted, and Ministers, on the part of the United States, will be commissioned to attend at those deliberations," &c., &c.

This language, I thought at the time, was unequivocal, and since has been rendered more explicit by the Executive communication before alluded to, of the 26th December, which I will take the liberty of reading to the Senate: "*Although this measure was deemed to be within the constitutional competency of the Executive, I have not thought proper to take any step in it before ascertaining that my opinion of its expediency will concur with that of both branches of the Legislature.*"

Has he not then asserted that he has the right to appoint Ministers independently of the Senate—Ministers, too, of no ordinary character, clothed with powers, admitted, on all hands, to be of the most important and perilous nature? Now, sir, what does the constitution say—this invaluable and inestimable little book, which I hold in my hand—the commission under which we all act, and from which we derive all our powers; which every officer of the Government takes a solemn oath, in the presence of his God and country, to preserve, maintain, and defend? "That the President shall have power, by and with the advice and consent of the Senate, to make treaties; provided two-thirds of the Senators present concur; and he shall nominate, *and, by and with the advice and consent of the Senate, shall appoint, Ambassadors, other public Ministers,*" &c.

I shall not, as I said before, attempt, by language, to make this subject more explicit than it is. The wise framers of our constitution, under the most auspicious circumstances, formed it, and transmitted it to us. It is our duty to preserve it in all its pristine purity and vigor. Although it may not be necessary to illustrate this principle, I hope the Senate will indulge me for a few minutes, while I attempt to give them some additional reasons why I submitted this resolution.

I view the usurpation which it notices, and purports to repel, as a link in a chain threatening the most portentous and calamitous consequences to the liberties of this people. In this light it has made a deep impression on my mind. Isolated, unconnected with any thing else, yet so plainly and palpably conflicting

with the letter and spirit of the constitution, it is truly appalling to the friends of liberty; but, when I connect it with the transactions that have tarnished the page of our history for little more than a twelvemonth past; when I connect this open usurpation, this wanton trespass on the form of Government under which we live, with the covert and insidious innovations which gave existence to, and characterizes the conduct of the present Chief Magistrate, I am decidedly of opinion that every friend of his country should be at his post.

It is time to re-enact Magna Charta. It is time to reassert the principles of the Declaration of Independence.

The danger to be apprehended from precedent, even from what has been termed the harmless *ipse dixit* of the President of the United States, may be made manifest by a recurrence to a few circumstances of comparatively recent date. Two years ago the immediate predecessor of the present President proclaimed to the European world, that they must not interfere with Old Spain, and her revolted colonies; intimating, if they did, that we might take part. I considered it, at that time, as an unauthorized, unmeaning, and empty menace, well calculated to excite the angry passions, and embroil us with foreign nations. Yet, sir, has *this* declaration been construed into a pledge or guarantee to the South American Republics; and, moreover, has been recognized as being obligatory on this nation, by those now in power. In proof of this, look to the letter of Mr. Poinsett, our Minister at Mexico, to Mr. Clay, dated September, 1825:

"To these observations I replied, that, against the power of Spain, they had given sufficient proof that they required no assistance, and the United States had pledged themselves not to permit any other power to interfere, either with their independence or form of government: and that, as, in the event of such an attempt being made by the powers of Europe, we would be compelled to take the most active and efficient part, and to bear the brunt of the contest, it was not just that we should be placed on a less favorable footing than the other Republics of America, whose existence we were ready to support at such hazards."

See the language of this gentleman, well known and highly estimated for his talents and integrity. Are we not bound to believe that the sentiments he avows, are in conformity with his instructions? Can we attribute to him so gross a violation of his duty? To fortify this opinion, I will call the attention of the Senate to Mr. Clay's letter to Mr. Poinsett, 9th November, 1825, in which he speaks of Mr. Monroe's pledge, in language that cannot be mistaken. When we reflect that the Secretary of State is a gentleman officially and confidentially connected with the President of the United States, shall we, are we at liberty to doubt, that this pledge, given by Mr. Monroe, has been recognized by the present President and Secretary of State? I say, we can come to no other

conclusion. Does it not then become our imperative duty, when we clearly see the dangerous consequences resulting from analogous usurpations, to protest against it, though he may not think proper at the moment, to carry the principle into practice?

Again: I contend, if the President is bound to advise with the Senate in ordinary cases, of appointing and sending Ministers where, by the laws and usages of nations, their powers and duties are susceptible of the clearest and most explicit definitions, and where the consequences likely to result are known and properly estimated; much more should he be bound where the objects to be obtained, and the duties to be performed, are not even understood by the President himself, as in this case may be seen by reference to the documents; in which it appears that he himself declined it, in the first instance, until he could be satisfied on those points. But, strange to tell, this ground was abandoned, without assigning a reason, and the invitations were accepted. Now, sir, as to the objects understood and openly avowed, what are they? to expound and settle important principles of international law—to concert the means for a more effectual resistance to the approaches of European domination, and doubtless to give efficiency to the recognized pledge of Mr. Monroe, in connection with a wild and enthusiastic crusade against the Roman Catholic religion. Are these legitimate objects, to say nothing more of them? Or, rather, are they not fraught with consequences of the most dangerous and most ominous nature, to the future peace and tranquillity of this country?

I will not trespass on the patience of the Senate, by an argument on this point. My object is to show that these Ministers to Panama are Ministers of the first and most important character, clothed with powers of awful import, and calculated to excite the well-grounded fears of every lover of his country.

We are called upon to send Ministers to South America to combat the prejudices of the Roman Catholic religion. I should think our labors had better be confined at home.

Furthermore—I contend that, if the President of the United States is not constitutionally bound to advise with the Senate in appointing Ambassadors and Ministers, that the Senate is not bound to act on the subject at all; in truth, has no right to act. Are we dependent on the whim, or caprice, or courtesy of the President, for power? Is it competent for him to enlarge our functions? Can he circumscribe them at pleasure? I trust not, sir.

We rely on higher authority; we rely on the commission given to us by the people themselves in convention; and, before my country, I protest, most earnestly protest, against all and every encroachment of the kind. Before my God I declare, that I never will be diverted from what I conceive to be the true policy of my country. I never will be *persuaded* by any

power save the constitution, and “*the will of my constituents*.” Yes, sir, however unfashionable the recognition of this dependence on our constituents may be, I must be permitted to pay my devotion to it, and recognize its obligation on me. They are the early impressions of my youth; they have been riveted on my mind as fundamental Republican truths; they have taken the firmest hold. They are such as I have fondly cherished in my bosom, and such as the people of this country never ought, never can, abandon, unless they prove false to themselves.

The Senate was wisely designed to act as a check upon the appointing power, not, I admit, to be exercised capriciously, but fearlessly and independently, when the public good requires it. It, therefore, becomes imperiously our duty, to guard well the powers conferred on this body. We are tenants at will, or, rather, trustees for the present and future generations; and it is, comparatively, of very little moment, as regards the few fleeting moments we occupy here. It is as time to eternity, when compared with the fundamental principles contained in this book. This is, I hope, intended for ages to come. It is intended, I trust, to be perpetual. It was so designed; but I have the most awful forebodings that it will not be. I have my fears, although, sir, it has stood the severest storms in a recent contest, and has carried us triumphantly through a war which has covered our country with imperishable renown—a struggle that embraced in its consequences the dearest principles of a free Government. But, though it carried us through this struggle successfully, it may not prove an adequate protection against the insidious encroachments of ambitious leaders.

Mr. RANDOLPH rose and said: I rise, sir, for the purpose of making an apology to the gentleman from North Carolina, for an unintentional word, [“never”] uttered, involuntarily, whilst he was speaking, although I was happy to see that it caused any thing rather than embarrassment to him. I rise, also, for the purpose of expressing to that gentleman my hearty thanks for having called up his motion, and for having relieved the Senate from that embarrassment, under which we have labored so long as that motion was nailed to that table. The unavoidable absence of the gentleman from North Carolina prevented its being taken up and disposed of; and the subject was thus put out of the reach, even of the Committee of Foreign Affairs, and is, therefore, not embraced in their report. And, whilst I am making my acknowledgments to the gentleman from North Carolina, I will make one more, in which, I believe, sir, another, and not the least member of this body, may participate with me, as an almost equal sharer in the obligation. The gentleman from North Carolina has steered his ship into action with a manliness and decision, a frankness and promptitude, a fearless intrepidity, that scorns all compromise with the

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foe, the common enemy of every true friend of his country; that will relieve, certainly, one, and, I believe, more than one, of this body from some part of the odium which has hitherto been borne almost exclusively by two. He forcibly reminded me of that gallant man, (was he not our countryman by birth, sir?) Hallowell, who so gallantly took the lead in the SWIFTSURE, at the battle of the Nile—the most brilliant and sublime naval conquest—the most important, whether in reference to itself or its consequence, that was ever won by man; when the brave but unfortunate Culloden, the leading ship, got aground; when Trowbridge, for the first time, performed an important but unwilling service, in marking, as a beacon, the channel to the rest of the fleet. I am glad to find that the gentleman from North Carolina has spoken to this House with the plainness that belongs to him, not only as a Southern man, but, emphatically, as a planter; it belongs to him as a slave-holder; it belongs to him as one who is not bound to electioneer and to curry favor with the driver of his carriage, or the brusher of his shoes, lest, when he shall have driven him to the polls, the one may dismount from his coach-box, or the other lay down his shoe-brush, and annihilate the master's vote at the next election; lest his servant may give him warning that he may no longer consider him as his "help," and go as a spy into the family of his enemy, if he shall have one, to tell, not only what he may have seen and heard, but what he never saw and never heard, in the family of his master. Master! did I say? No, sir, "*his gentleman*." This *delator* and champion of universal suffrage owns no master—he claims the mastery over you. I thank the gentleman from North Carolina—most sincerely and heartily do I thank him. I trust that it will turn out in the end—whether our adversaries be born to consume the fruits of the earth—*fruges consumere nati*—whether or not they belong to the caterpillars of the Treasury or of the law; that, of us, it may be truly said, *nos numerus umus*; that our name, too, is Legion: for, sir, we belong to the cause and the party of the people; we do claim to belong to the majority of this—"nation?" No, sir, I acknowledge no nation—of this Confederate Republic. For I, too, disclaim any master, save that ancient Commonwealth whose feeble and unprofitable servant I am. The President himself has confessed that he does not possess the suffrage of the majority, or the confidence enjoyed by his predecessors. He is even desirous of a new trial. He shall have one, and no thanks to him for it. God send him a good deliverance from the majority; and God send us, the majority, a good deliverance from him.

Having thus, sir, disburthened myself of some of the feelings that have been excited by the gallant and fearless bearing of the gentleman from North Carolina, allow me to go on and question some of his positions.

One of them is the durability of the constitution. With him and with Father Paul (of the constitution of Venice) I say "*esto perpetua*." but I do not believe it will be perpetual. I am speaking now of what Burke would call high matter. I am not speaking to the groundlings, to the tyros and junior apprentices; but to the gray-headed men of this nation, one of whom, I bless God for it, I see is now stepping forward, as he stepped forward in 1799, to save the Republic. I speak of William B. Giles. I speak to gray-heads; heads grown gray, not in the "receipt of custom" at the treasury, of the people's money; not to heads grown gray in iniquity and intrigue; not to heads grown gray in pacing Pennsylvania Avenue; not grown gray in wearing out their shoes at levees; not to heads grown gray (to use the words of the immortal Miss Edgeworth, the glory and the champion of her lovely sex and wretched country) in ploughing the Four Acres. Am I understood? There is a little court, sir, of the "CASTLE" of Dublin, called the Four Acres; and there, backwards and forwards, do the miserable attendants and satellites of power walk, each waiting his turn to receive the light of the great man's countenance; hoping the sunshine; dreading the cloudy brow. Spenser has well described the sweets of this life,\* and technically it is called ploughing the Four Acres. Now, when a certain character, in one of her incomparable novels, Sir Ulic—I have forgot his name, but he was a McSycophant; courtier, placeman, pensioner, and parasite—upbraided that kind, good-hearted, wrong-headed old man, King Corny, with his wretched system of ploughing, the King of the Black Islands ("every inch a king") replied, that there was one system of ploughing worse even than his; and that was ploughing the Four Acres. This was a settler to the McSycophant.

Sir, I shall not detain the Senate long. We are now making an experiment which has "*never*" yet succeeded in any region or quarter of the earth, at any time from the deluge to this day. With regard to the antediluvian times, history is not yet very full; but there is no proof that it has ever succeeded, even before the flood; one thing, however, we do know, that it has never succeeded *since* the flood; and, as there is no proof of its having succeeded before the flood; as, *de non apparentibus et non existentibus eadem est ratio*; it is good logic to infer, that it never has succeeded, and never

\* Full little knowest thou that hast not try'd,  
What Hall it is in suing long to bide;  
To lose good days, that might be better spent,  
To waste long nights, in penative discontent;  
To spend to-day, to be put back to-morrow,  
To feed on Hope, to pine with Fear and Sorrow;  
To have thy Prince's grace, yet want his peers;  
To have thy saking, yet wait many years;  
To fret thy soul with crosses and with cares,  
To eat thy heart thro' comfortless despair;  
To fawn, to crouch, to wait, to ride, to run,  
To spend, to give, to want, to be undone.  
*Office-seeker's Lament.*

can succeed anywhere. In fact the *onus probandi* lies on them that take up the other side of the question: for although *post hoc ergo propter hoc* be not good logic—yet when we find the same consequences generally following the same events, it requires nothing short of the skepticism of Mr. Hume, to deny that there is no connection between the one and the other; whatever, metaphysically speaking, there may be of necessary connection between cause and effect. I say, then, that we are here making an experiment which has never succeeded in any time or country; and which, as God shall judge me at the great and final day, I do in my heart believe will here fail; because I see and feel that it is now failing. It is an infirmity of my nature—it is constitutional—it was born with me—it has caused the misery (if you will) of my life—it is an infirmity of my nature to have an obstinate constitutional preference of the *true* over the *agreeable*; and I am satisfied that if I had an only son, or what is dearer, an only daughter—which God forbid! I say God forbid, for she might bring her father's gray hairs with sorrow to the grave; she might break my heart—but worse than that—what! Can any thing be worse than that? Yes, sir, I might break hers. I should be more sharp-sighted to her foible than any one else.

Sir, as much as they talk of filial ingratitude, how, sharper than the serpent's tooth, it is to have a thankless child—how much more does it run counter to all the great instincts of our nature, planted for good and wise purposes in our bosoms—not in our heads, but in our hearts—by the Author of all good—that the mother should be unkind to the babe that milks her; the father cruel to his own child. They are well called unnatural parents: for it is a well-known law of nature, that the stream of succession and of inheritance, whether of property or affection, is in the descending line. I say, in my conscience and in my heart, I believe that this experiment will fail—if it should not fail, blessed be the Author of all good for snatching this people as a brand from the burning which has consumed as stubble all the nations—all the fruitless trees of the earth; which before us have been cut down and cast into the fire. Why cumbereth it the ground; why cumbereth it? Cut it down—cut it down. I believe that it will fail; but, sir, if it does not fail, its success will be owing to the resistance of the usurpation of one man by a power which was not unsuccessful in resisting another man of the same name, and of the same race. And why is it that I think it will fail? Sir, with Father Paul, I may wish it to be perpetual, *esto perpetua*, but I cannot believe that it will be so. I do not believe that a free Republican Government is compatible with the apery of European fashions and manners—is compatible with the apery of the European luxury and habits; but if it were, I do not know that it is entirely incompatible

with what I have in my hand—a base and baseless paper system of diplomacy, and a hardly better paper system of exchange. I speak of paper money under whatever form it may exist; whether in the shape of the old continental Spanish milled dollar, printed on paper, or in the promise to pay, which promise is never intended to be redeemed—of the sound significant [a word] for the thing signified, [dollars]—of the emblem, multiplied at will, for the reality, which has an actual, if not a fixed, value: for there is and can be no unchangeable standard of value—it is worse than shadow for substance: for shadow implies *some* substance; while promises to pay *dollars*, imply neither ability nor inclination to pay cents.

This Panama mission is no new thing, as I shall now proceed to show: "January 20th, 1824. House of Representatives. On motion of Mr. Webster, the House resolved itself into a Committee of the Whole, on the state of the Union, Mr. Taylor in the chair." It was well understood that our present Minister to Mexico—to the Government, I presume, of Mexico—I don't say *near* Mexico, because a man who is at a town must certainly be more than near to it—was to offer a string of resolutions, and did offer them; but Mr. Clay, who was then Speaker of the House of Representatives, and who could not make a motion except in Committee of the Whole, by the rules of the House, anticipated Mr. Poinsett by moving this resolution, Mr. Webster having first enabled him to do so, by moving for the committee, whereupon Mr. Taylor was called to the chair:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the people of these States would not see, without serious inquietude, any forcible interposition, by the allied powers of Europe, in behalf of Spain, to reduce to their former subjection those parts of the Continent of America which have proclaimed and established for themselves, respectively, Independent Governments, and which have been solemnly recognized by the United States."

"The Committee of the Whole having resumed the consideration of the resolution recommending an appropriation to defray the expense of a mission to Greece, Mr. Poinsett, of South Carolina, rose, and addressed the House, in a speech of some length, which he concluded by moving the following amendment:

"Resolved, That this House view with deep interest the heroic struggle of the Greeks to elevate themselves to the rank of a free and independent nation; and to unite with the President in the sentiments he has expressed in their favor; in sympathy for their sufferings, in interest in their welfare, and in ardent wishes for their success.

"Resolved, That this House concur in the sentiments expressed by the President, in relation to this hemisphere, and would view any attempt to oppress or control the free Governments of America, south of us, by the allied powers of Europe, as dangerous to the peace and happiness of the United

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States; and that such measures as may be deemed expedient to protect them from the attacks of any power, other than that of Spain alone, and unassisted, will meet its cordial support."

[The latter resolution was withdrawn by Mr. P., in consequence of a resolution to a similar effect having been laid upon the table by the Speaker.]

I shall not read more. I say now, sir, that the House went into Committee of the Whole, on motion of Mr. Webster—that Mr. Taylor was in the chair—I beg your attention to the names—that Mr. Poinsett had resolutions to offer on the subjects of South America and Greece, in which he was anticipated by the then Speaker, now Secretary of State. I am speaking from the record—from the book. Is my date noted?—January 20, 1824. I must remark (in passing) that a proposition was brought forward by Mr. Webster, at that very identical time, if my memory don't deceive me, in reference to interference of the United States in behalf of Greece. The "nation?"—no, sir, the United States, the people of the United States can never forget the zeal, the more than parental zeal, with which the present Secretary of State then hovered over the resolution—aye, and over the personal and political character of the mover, (Mr. Webster,)—with all the tender anxiety of a parent hen with her one chicken. There was full as much bustle, and the object of at least equal value; for, little things are great to little men. We all know the gentleman (Mr. Bartlett) from New Hampshire—Portsmouth, New Hampshire—unfortunate Portsmouth!—*haud ignarus mali, miserie succurrere disco*—thrice unhappy Portsmouth—*infelix Dido*—she who stands again almost alone, as in the days of John Langdon, for our rights—how was she treated on that occasion, and by a former representative of Portsmouth too, as well as by his new ally—in defence of what? In defence of the proposition of Mr. Webster, and of his political character, as a federalist of the true Boston stamp; and by whom? By the then Speaker, now Secretary of State. Now, sir, I do not pretend to be a man of more than ordinary sagacity. I never pretended to be able to see farther into a millstone than other people, and not so far as those that look through the eye—but I did, immediately after this transaction, write a letter to a friend, which letter, with its postmark and date, can now be produced, stating that, according to my view of things, an alliance, offensive and defensive, had been got up between old Massachusetts and Kentucky—between the frost of January, and young, blythe, buxom, and blooming May—the eldest daughter of Virginia—young Kentucky—not so young, however, as not to make a prudent match, and sell her charms for their full value. I had been an eye and ear witness of the billing and cooing between the old sinner and the young saint, and had no doubt that the consummation would, in a decent time, be effected. I

wrote that letter then, in the month of January, 1824; and, therefore, when I came here in the month of December, 1824, on my return from Europe, I wanted no ghost to tell me about the future movements of certain "*distinguished public characters*," and consequently of the evolutions of the forces, whether the heavy phalanxes, or active legions, under their command. I wanted nobody to tell me, what I thought it required not more than half an eye to see. I put myself, therefore, calmly into winter quarters, at Dowson's, No. 2, and hibernated very quietly during the session, taking no part in what was done, legislatively or otherwise. Almost the only time that I took a part, I was acting, like the rest, a very selfish part; I was taking care of number one; and having put number one *rectus in curia*, I left number two and number three and four to play out the game, and to divide the spoil in the ratio that they might deem equitable—to have "a settlement upon equitable principles"—not at the treasury—such accounts could never pass there—but on the new-fashioned principles—"equitable principles," by which accounts of anomalous character, without voucher or law, except the act of settlement, are cast and paid out of our money—the people's money. Here were the knowing ones adding their pates, and cudgelling their brains, and wearing out their shoes, and wasting their money, their whole *per diem*, some of them in hack hire, driving from one end of this interminable and desolate city to the other, intriguing about the Presidency; trying, perhaps, to make some dirty bargain for the Presidency, when the question was settled as far back as in January, 1824. I have not proof positive, but I think I have what the lawyers call a *negative pregnant*, that this election was not conducted as it ought to have been conducted—that it was managed, not conducted at all. The great Mr. Pitt once said in his place in Parliament, that if any man, gentle or simple, should put the direct question to him, whether or not a corrupt influence was used in elections there and exercised ("through the means of patronage") "over both Houses of Parliament?" (aye and over the body of the people too, and over the press)—he should laugh in such gentleman's or simpleton's face, and say, "Sir, it is not so."\*\*\*\*\*

[Here ends Mr. R.'s revision of these remarks. What follows is furnished from the notes of our reporter.]

I intended, sir, to have gone into some other considerations more at length. I must reserve them for a future time. I believe that they have vital warmth in them sufficient to preserve their animation till that time shall arrive. I believe they will stand a Russian frost.

Now, sir, the election being over, about which I shall say nothing—I bring no sort of innuendo against great men—great let me call them, since they have conquered me, my constituents, my people—and so, having conquer-

ed that people, that is the affair of that people—I deal with them only as the half Representative of the State of Virginia—but there are some curious coincidences, sir, in regard to this matter. Not only do we find one of these gentlemen, almost the avowed confidential organ of the Executive and manager of the House of Commons—I beg pardon—the House of Representatives—another, in the Secretaryship of State; a third, in the Speaker's chair; but we find the fourth, Minister to Mexico. Now, sir, what better could be done for a gentleman, avowedly well qualified for the mission, than to make him some reparation for this cruel decoliation of his motion? The reparation was due to him—it has been made. At that time—I mean in 1824—I took something of an active part in the House of Representatives; I was forced on in the Greek question, and we put the Greeks on the shelf, mover and all—*pro hac vice* I mean. But at that time the mover of this resolution, which I have just read, about South America, says, in reply to the gentleman from Virginia, to whom it does not become me to allude if I could possibly avoid it, that, when that discussion should come up, he pledged himself to show, I don't know how many fine things; and the gentleman said he had been too long acquainted with his promises to rely on them, and he looked for performance—which never came from that day to this—for that resolution has never been called up—it slept—it took a dose of Turkey opium—a dose from the Levant, brought in a Greek ship—it fell sound asleep, and has not waked from that day to this—did I say from that day to this? Yes, sir. It waked up like the man in the Arabian Nights Entertainments, who, having fallen asleep a groom, waked up in the palace of the Grand Vizier, with the Vizier's daughter for his wife—it waked up in the Department of State—while the friendly genius who had metamorphosed him, had put the bridegroom in a place not to be named before gentlemen, much more before ladies.

So much for the Presidential question, out of the House; now, one word of coming in. Sir, it was on that very occasion—[Here Mr. HAYNE said something, in a low voice, to Mr. R.]—I beg pardon, I must go on. Well, sir, this alliance between the East and the West being consummated by a new species of Congress—not the Congress between the sexes, but a different one—this alliance being consummated, do you wonder that the President of the United States should, from his new ally, learn to play at the political game of brag? The gentleman from North Carolina complains of the President coming here with a plan of his powers: he imitated the wise man at Rome, who *could* jump thirty leagues at a leap, but took care not to go through it there—they buried the hatchet, and, with it, the pledges they had given to prove each other to be—what, I shan't say.

Sir, in what book is it—you know better

than I—in what parliamentary debate was it, that, upon a certain union between Lord Sandwich, one of the most corrupt and profligate of men in all the relations of life, and the sanctimonious, puritanical Lord Mansfield, and the other ministerial leaders—on what occasion was it, that Junius said, after Lord Chatham had said it before him,\* that it reminded him of the union between Bliff and Black George? I, who am no professional man, but only a planter: I, whose reading has not gone very deep into black letter, though I do know some little of that too: I do believe there is more wisdom, after the Bible, Shakspeare, and Milton—I do believe that, in Don Quixote, Gil Blas, and Tom Jones, there is contained a greater body of wisdom than is to be found in the same number of pages in the whole collection of English and foreign literature. I might have added to them, the famous Thousand and One Nights: for, though they are fabulous, they are human nature, sir. It is true, it is Eastern nature, but it is the same thing that Fielding served up—it is human nature. I remember very well, one of the numerous heroes of Gil Blas, the son of Coscolina, our old friend Scipio—I recollect very well, an adventure that befell him. Towards the close of that inimitable and immortal romance, Scipio is called on to tell the story of his life. He begins by saying that he—it is a remarkable coincidence—he was born in infancy to indigence, ignorance—and, sir, the son of Coscolina might have kept up the alliteration, by adding, to impudence; and that, if he had been the author of his own being—if he had been consulted on the occasion, he would have been a grandee of the first class. Who doubts it? Who doubts Scipio or any one else, when he says he should wish to have been born of a

\* When the author of this Abridgment was ten years old, which was in the last decade (borrowing Livy's division of time in the expression) of the last century, and before enlightened writers had thrown darkness on the authorship of Junius, it was well conceded that there was but one man in England, or the world, who united in himself all the qualities of head, heart, and temper—all the incidents of political and personal life—which the writing of those letters required. But one man who had such power to drive the English language—such knowledge of men and things—such amplitude of information—such lofty and daring spirit—such inducement to publish his thoughts, and conceal his name—an oratorical fame already so great as to set him above the assumption of that of Junius, great as it was. That one man was Lord Chatham! then old, and out of favor with the king, and dominant parties—relegated (by his peerage) to that "Hospital of Incurables," the House of Lords, whence no patriot voice could reach the Commons of England—retired to his country seat at Hayes, and all visitors shut out—discontented—despairing—restless—and seeing no way to reach the people, but through the press, and by means of appeals; bold to audacity, patriotic to temerity; and the more impressive because shrouded in the mystery of an unknown origin. So stood Lord Chatham and Junius in the latter part of the century in which they lived—convertible characters, identical in person.

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good family, to a good estate, and to have been brought up in good habits, and with the manners and principles of a gentleman? Who doubts it? It was Scipio's misfortune that he was not; and I would take even Scipio's evidence in this case, or any other man's. Among other adventures that befell the son of Coscolina, he entered into the service of a certain Don Abel, who carried him to Seville, in Andalusia; and, on a certain occasion, coming home with very bad luck from a card table—that will sour the temper even of the mildest—I have seen ladies themselves not bear heavy losses at cards very well—he gave Scipio a box on the ear, because he had not done something which he had not ordered him to do, but which it was the part of a good servant to have done, without being ordered. Scipio goes to tell his story to a bravo, and tells him that his master is going to leave Seville, and that, as soon as the vessel runs down the Guadalquivir, he shall leave him. If this is your plan of revenge, says the bravo, your honor is gone forever—not only do this, but rob him—take his strong box with you. Scipio, at that time, had not conceived the atrocious idea of adding robbery to breach of trust; but he agreed to the proposition. But, as they were descending the staircase, the bravo—strong as Hercules to carry off other men's goods—with the strong box on his shoulders, they are met by Don Abel. The bravo puts down the coffer, and takes to his heels, and Scipio awaits the issue of his master's wrath. He can tell his story, and put a face on the matter. What are you doing with my coffer? I am going to take it to the ship. Who told you to do so? Nobody. What is the name of the ship? I don't know; but, having a tongue in my head, I can inquire. Why did you carry my coffer off? Did you not chastise me the other day for not having done something without being ordered? Did not I know you were about to embark, and was it not my duty to see your luggage safe on board the ship? Abel's reply was, "My good friend, go about your business. I never play with those who sometimes have a card too many, and sometimes a card too few." It shall be my business (said Mr. R.) to prove, at a future time, that this is the predicament in which our present Ministry stand; whereas, on a certain occasion, they had a card too few, on another, they had a card too many, or a *conceit*. I believe I can prove it both ways. I, like Don Abel, am ready to bid them go their ways in peace, and to determine that they shall never play again, with the power and the money of the people that I represent, with my leave. I say I will prove, if the Senate will have the patience to listen to me—I will prove to their satisfaction that the President has clapped an extinguisher on himself. If I don't prove it—it is a pledge that shall be redeemed—not like the pledge about the navigation of the Mississippi—not like the pledge about the Spanish American resolution—it shall be re-

deemed, or I will sit down infamous and contented for the rest of my life. And how, sir, has he extinguished himself? He has done it by the aid and instrumentality of this very new ally. I shall not say which is Bliffl and which is Black George. I do not draw my pictures in such a way as to render it necessary to write under them, "this is a man, this is a horse." I say this new ally has been the means of extinguishing him, and for what? Sir, we hear a great deal about the infirmity of certain constitutions—not paper constitutions—we hear a great deal of constitutional infirmity—seven years is too long for some of us to wait; and if the President can be disposed of at the end of three years, then, being extinguished, may they not, by some new turning up of trumps, expect to succeed him? I shall suggest to my good friend from Missouri, whether there is not in fact a Trojan horse within the walls of the Capitol—no, not of the Capitol, but of the Executive palace. I would suggest to him whether there is not an enemy in the camp who, if I should fail in blowing anybody sky high, will put them—below not only the sky, but the ground—bury them. But, whatever the motive may have been, the fact is as I have stated it, that there is a discrepancy in the communications of the Executive to Congress; and I will state another thing when I come to it. It is, that I do believe—though I do not pledge myself to prove—but I will pledge myself to make out a very strong case, such as would satisfy a jury in the county of Charlotte—and I would put myself on that jury, and be tried by God and my country—I then say, sir, that there is strong reason to believe that these South American communications, which have been laid before us, were manufactured here at Washington, if not by the pens, under the eye of our own Ministers, to subserve their purposes.\* Sir, though in one respect I am like the great Earl of Warwick the king-maker, and a little unlike him in unmaking one king—though between two hawks I can tell which flies the higher pitch—between two dogs, which has the deeper mouth—between two horses, which bears him best—between two blades, which hath the better temper—between two girls, which hath the merrier eye—yet, in matters of law, I am like the unlearned Earl Goodlack. One thing has my attention been turned to—language—words—the counters of wise men, the money of fools—that machine and material with which the lawyer, the priest, the doctor, the charlatan of every sort and kind, pick the pocket, and put the fetters upon the planter and upon the slaveholder. It is by a dexterous cutting and shuffling of this pack that the business is done. They who can shuffle the whole pack, are often quite ignorant of any foreign language, even of their own, and, in

\* It was this speech which made the duel between Mr. Randolph and Mr. Clay, recounted in the first volume of the *Thirty Years' View*.



their attempts to write and talk finely, they only betray their poverty, like the fine ladies in the Vicar of Wakefield, by their outrageous attempts to be very genteel. The first thing that struck me in these documents was, how wonderfully these Spaniards must have improved in English in their short residence in the United States. It reminded me of a remark in one of Scott's novels, in the part about old Elspeth, of the Craighurnfoot: "Aye," says old Edie, "she's a well educate woman; and an' she win to her English, as I hae heard her do at an orra time, she may come to fickle us a'." These Spaniards have got to their English, and we are all ficked. But I shall be told—not as I have been told—but as I am prepared to be told—because I have kept this thing locked up here to bring it out here in this Senate—I shall be told that these English letters were translations from the Spanish, made in the office of the Secretary of State. I hope not—I should be sorry to see any such tokens of affinity, and consanguinity, and good understanding; but they have the foot-prints and the flesh-marks of the style of that office, as I shall show on a future occasion. I cannot show it now—it would be unreasonable—but show it I will, and in a manner that shall satisfy any honest jury on the south side of the Ohio, and on the south side of Mason and Dixon's line—any honest jury—and I will bring the presumption so strong, that he must possess more than Christian charity (which covereth all things) who will deny that there exists strong presumptive evidence—and, sir, against the honor of a man, as against the honor of a lady, strong presumptive evidence is a fatal thing—it is always fatal when that presumptive evidence cannot be cleared up and done away. Do you read the letters of these South American Missionaries over again, and compare them with the tone of the messages and letters which we have received—put them in columns one against the other, and mark the similitude. My suspicious temper may have carried me too far—if it has, I will beg pardon—but will show enough—not a handkerchief—not to justify the jealousy of Othello—yet I believe that the jealousy might have been pardoned to the noble Moor, certainly by me, had he not been a black man; but the idea to me is so revolting, of that connection, that I never can read that play with any sort of pleasure—see it acted I never could.

Now, sir, John Quincy Adams coming into power under these inauspicious circumstances, and with these suspicious allies and connections, has determined to become the apostle of liberty, of universal liberty, as his father was, about the time of the formation of the constitution, known to be the apostle of monarchy. It is no secret—I was in New York when he first took his seat as Vice President. I recollect—for I was a school-boy at the time, attending the lobby of Congress, when I ought to have been at school—I remember the manner in

which my brother was spurned by the coachman of the then Vice President, for coming too near the arms blazoned on the scutcheon of the vice-regal carriage. Perhaps I may have some of this old animosity ranking in my heart, and, coming from a race\* who are known never to forsake a friend or forgive a foe—I am taught to forgive my enemies, and I do from the bottom of my heart, most sincerely, as I hope to be forgiven; but it is my enemies—not the enemies of my country; for, if they come here in the shape of the English, it is my duty to kill them; if they come here in a worse shape—wolves in sheep's clothing—it is my duty and my business to tear the sheep skins from their backs, and, as Windham said to Pitt, open the bosom, and expose beneath the ruffled shirt the filthy dowls. This language was used in the House of Commons, where they talk and act like men—where they eat and drink like men, and do other things like men—not like Master Betty. Adams determined to take warning by his father's errors, but in attempting the perpendicular, he bent as much the other way. Who would believe that Adams, the son of the sedition-law President, who held office under his father—who, up to December 6, 1807, was the undeviating, staunch adherent to the opposition to Jefferson's Administration, then almost gone—who would believe he had selected for his pattern, the celebrated Anacharsis Cloots, "orator of the human race?" As Anacharsis was the orator of the human race, so Adams was determined to be the President of the human race, when I am not willing that he should be President of my name and race; but he is, and must be, till the third day of March, eighteen hundred and—I forget when. He has come out with a speech and a message, and with a doctrine that goes to take the whole human family under his special protection. Now, sir, who made him his brother's keeper? Who gave him, the President of the United States, the custody of the liberties, or the rights, or the interests of South America, or any other America, save only the United States of America, or any other country under the sun? He has put himself, we know, into the way, and I say, God send him a safe deliverance, and God send the country a safe deliverance from his policy—from his policy. Sir, it is well known to you, that up to the period of getting this message from Adams, I was the champion here of his rights as a co-ordinate branch of the Government. I was the person who rose immediately after the gentleman from New York, and protested against our opening the doors, for reasons with which I will not trouble the Senate. On the question of a call on the Executive, for other information than the treaties, &c., I said, the President is a co-ordinate branch of this Government, and is entitled to all possible respect

\* Indian descent from Pocahontas.

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from us. It is his duty to lay before us information on which we must act—if he does not give us sufficient information, it is not our business to ask more—I never will ask for more, and to be given confidentially, &c. [Mr. R. here briefly adverted to the history of the resolutions in the secret session.] I did maintain the rights of the President, said Mr. R., but from the moment he sent us this message—from that moment did my tone and manner to him change. From that moment was I an altered man, and I am afraid, not altered for the better. [Here Mr. R. read the Executive Message, of the 16th February, as follows:]

"In answer to the two resolutions of the Senate, of the 15th instant, marked (Executive,) and which I have received, I state, respectfully, that all the communications from me to the Senate, relating to the Congress at Panama, have been made, like all other communications upon Executive business, in *confidence*, and most of them in compliance with a resolution of the Senate requiring them confidentially. Believing that the established usage of free confidential communications between the Executive and the Senate, ought, for the public interest, to be preserved unimpaired, I deem it my indispensable duty to leave to the Senate itself the decision of a question"—Sir, said Mr. R., if he would leave to the Senate the decision of the question, I would agree with him; but the evil genius of the American House of Stuart prevailed—he goes on to say, that the question "involves a departure, hitherto, so far as I am informed, without example, from that usage, and upon the *motives for which*, not being informed of them, I do not feel myself competent to decide." If this had been prosecuted for a libel, what jury would have failed to have found a verdict on such an innuendo? that we were breaking up from our own usages, to gratify personal spleen? I say nothing about our *movements*, because he was not informed of them; the innuendo was, that our *motives* were black and bad. That moment did I put, like Hannibal, my hand on the altar, and swear eternal enmity against him and his, politically. From that moment I would do any thing within the limits of the constitution and the law; for, as Chatham said of Wilkes, I would not, in the person of the worst of men, violate those sanctions and privileges which are the safeguard of the rights and liberties of the best;—but, within the limits of the constitution and the law, if I don't carry on the war, whether in the Peninsula or anywhere else, it shall be for want of resources. Mr. R. went on to speak of the motions to which this message of the President's had given rise; one of which described the nature and character of the message. To the resolution, said he, I objected. I said, I would have all the nakedness of the Greek statue; I would even take off the skin, that the muscles might be developed, and that we might have the naked fact. After

further observations on the resolutions moved in conclave on this subject, Mr. R. repeated what he had then said, in reference to the message of the President. Who made him a judge of our usages? Who constituted him? He has been a professor, I understand—I wish he had left off the pedagogue when he got into the Executive chair. Who made him the *censor morum* of this body? Will any one answer this question?—Yes or no?—Who?—Name the person. Above all, who made him the searcher of hearts, and gave him the right, by an innuendo black as hell, to blacken our motives?—blacken our motives—I did not say that, then—I was more under self-command; I did not use such strong language—I said if he could borrow the eye of Omniscience himself; and look into every bosom here—if he could look into that most awful, calamitous, and tremendous of all possible gulfs, the naked unveiled human heart—stripped of all its coverings of self-love—exposed naked as to the eye of God—I said, if he could do that, he was not, as President of the United States, entitled to pass upon our motives, although he saw and knew them to be bad. I said, if he had converted us to the Catholic religion, and was our Father Confessor, and every man in this House at the footstool of the confessional had confessed a bad motive to him, by the laws of his church, as by this constitution, above the law and above the church, he, as President of the United States, could not pass on our motives, though we had with our own lips told him our motives, and confessed they were bad. I said this then, and I say it now. Here I plant my foot—here I fling defiance right into his teeth, before the American people. Here I throw the gauntlet to him and the bravest of his compeers, to come forward and defend these miserable dirty lines: "Involving a departure, hitherto, so far as I am informed, without example, from that usage, and upon the motives for which, not being informed of them, I do not feel myself competent to decide!" Amiable modesty! I wonder we did not, all at once, fall in love with him; and agree, *unavocis*, to publish our proceedings—except myself—for I quitted the Senate ten minutes before the vote was taken. I saw what was to follow—I knew the thing would not be done at all, or would be done unanimously. Therefore, in spite of the remonstrances of friends, I went away, not fearing that any one would doubt what my vote would have been, if I had staid. After twenty-six hours' exertion, it was time to give in. I was defeated, horse, foot, and dragoons—cut up—and clean broke down—by the coalition of Bliffl and Black George—by the combination, unheard of till then, of the puritan with the black-leg.

Having disposed of this subject, I shall say one word more, and sit down. I said, on the subject already adverted to, let the Senate take a dignified stand—don't let them say, We sent to you for that thing, you sent us this; therefore,

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we shall not go any farther—we shall stop. Let them behave like Romans, like Conscrip't Fathers. I am sorry I was prevailed on to withdraw my motion, even to make way for that of the gentleman from Portsmouth, New Hampshire. But she once went with us—we rode through the equinoctial gale together—Portsmouth overcame the first Adams, and Portsmouth, New Hampshire, I trust, will overcome the second. I should not have made this allusion, but for a toast I heard lately from a friend of mine—"Those who fell with the first Adams rise with the second." Very true—*c'est vrai*. Agreed—they who fell under the wrath and desperation of the first Adams—the dust and ashes men—have risen too. I saw one of them this morning. We too have risen, and the strife is to come. North Carolina has started forth boldly and manfully, like the fine fellow at the battle of the Nile—I believe he was an American—he led the van, and I humbly follow in the wake. It is skirmishing with the light-armed troops—with the voltigeurs—I hope we shall here form a phalanx, a legion—I hope to see, not only Hector in the field, but Troilus, and a host of worthies with him. If not, we too shall have to sing *Fuit Ilium*—we too shall have to sing, Where the Capitol stood, there grows the harvest. We must put our shoulders to the wheel—having put our hand to the plough, we must not fall back. How men can find time to be sick I can't conceive—I must be dead before I could refrain at a call like this.

I never write out speeches. I am glad I am singular in that respect. But I would not lose those that have been published, and those that are about to be published very soon, (on the Panama mission,) for all the books that have been written in defence of constitutions—that on the British Constitution (De Lolme) included. We poor narrow-minded wretches believed that it was not our business to go on a crusade to Terra del Fuego, to prevent somebody making a settlement where man cannot live, or to the North Pole. Our business is to attend to the interests and rights of the American Confederacy here. Like Hector's wife, who was found spinning amongst her maids, we did believe that the care of our household was our main concern. The card-table has gone out of fashion now—even lotteries are denounced—I don't mean such a one as that granted to Jefferson by the Legislature of Virginia—I should have voted for that bill if I had been there—horse-racing and billiards are no longer in vogue—all these having been discarded, what is got up in their place? The same meddling, obtrusive, intrusive, restless, self-dissatisfied spirit shows itself in another way. The ennui breaks out in a new place—the *tedium vite* appears in Sunday Schools, Missionary Societies, subscriptions to Colonization Societies—taking care of the Sandwich Islanders, free negroes, and God knows who. It is the same spirit which drove men from home to the card-table, to the billiard table, and the horse race. It is a matter of fact, that a gentle-

man told me, that, going to visit a very pious lady and gentleman in Virginia, the little negroes were so ragged as to be obliged to hide for shame, and the women of the family were employed in making pantaloons and jackets for the free negroes at Liberia. Whenever any of these ministers, male or female, come to me with their complaints and petitions for aid, I never can forget Gil Blas and Señor Manuel Ordonez, who got rich and lived comfortably by administering the funds of the poor. If we cannot get here an account of the money we vote by appropriation, I should like to see a settlement of the accounts of the Otaheitans. I should like to see the vouchers of the expenditures for these Sandwich Islanders, and these Liberian people—I am afraid we should have to settle them on equitable principles—they would never pass the Treasury. When I cannot get an account from my own steward, as a private man: when, as a public man, I do not know what has become of the millions of the people's money; should I not be the veriest ass that ever existed, to expect a proper application of money when there is half the diameter of the globe between me and the applicant? I hold out this as a hint to all benevolent gentlemen and ladies, whose good hearts are imposed on for the support of sturdy beggars, who would rather beg than work. Begging is gone out of fashion for one's self—it is for some miserable establishment—we must convert the Catholics at Panama—we must convert the Jews—"Give me the money, my dear madam, and I will see it properly applied." We are now doing in this country what has been done in every country under the sun—as the old cheats wear out, new ones spring up. As the old faro banks wear out, banks of discount spring up. When, in Virginia, we had billiard tables, and cards, and races, and not half the population we now have, I could produce you two honest men where we can now show one. We have no faro bank, no billiard table—we have hardly a race—we have got too good to run races—but we are not too good to embezzle the money intrusted to us, or to do any thing that is covered up under the garment of religion. Hypocrisy is the only sin that walks abroad that cannot be discerned, except by the eye of God alone; yet, when you see a man's whole conduct at variance with his religious profession, you will not be defective in charity alone if you do not come to the conclusion that, like Manuel Ordonez, he is pretty much of a cheat.

I find, sir, that the regular speech I had been preparing for the Senate, has not arrived at its due term of parturition. But, in due time, I trust it will make its appearance. I will trespass no longer on the time and patience of the Senate—but there is more behind—come out it shall—redeem the pledge I will—I will show that this Panama mission is a Kentucky cuckoo's egg, laid in a Spanish American nest. I will show that the President of the United States and his Ministers have Jonathan-Russell the Congress of the United States—that he has held

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one language at one time, on the same subject, to one House of Congress, while to another House he has held a different language on the same subject. I will not bring it here in notes. I will have the letters printed in parallel passages, that they may be compared with the style of the Department of State—whether the Department of State be, in this case, the President of the United States, or whether it be the officer who presides over that Department, it will show sufficient to satisfy any man of common penetration that these things were manufactured here, and that this Don Salazar, or whatever he is, had just as much hand in it as the Grand Inquisitor had in the commission with which Don Raphael and broker Ambrose de Lamela, in company with Gil Blas, made a visit to the Jew, and rifled his coffers. I will prove to any man—they may write what Spanish they please—carry it to an indifferent translator, and there shall be no similarity in style, grammatical construction, or any thing else, between the letter they write, and the letter which it is alleged they have written, and which has been translated and sent to us. Why were not the originals sent? Is the name of the translator given? No. They are not sent as purporting to be translations.

This is a strange world. The man who is whistling over the furrow, at the time he is turning in corn to give bread to his wife and family, knows no more of what is doing here than a man in South America. He does not know that they who never did plant corn, or never shall plant corn again, are to take the best part of his crop. He does not know, while his horses are poor because he cannot afford to keep them fat, that horses are driven in this city that are fed out of his crib—he does not know this, because you get the money from him *tariffically*—he is *tariffed*, as we say in Virginia. He is taxed for all the real necessities of life—and how does his money go? I wish he could come here to see. If every man in the United States could spend one day in Washington—if every woman could spend one hour here—and God forbid that my wife or daughter should spend more—then you would have salvation for the Republic. It must be some special interposition of Providence, though working by secondary causes, that will snatch this nation from the downhill progress it is making, not merely to bankruptcy, but to perdition. We may flatter ourselves as long as we please, and think, and talk, and brag, and boast, in fourth of July orations and others, of being the most enlightened people under the sun—we may be all that, and yet be radically ignorant. We are going the road that has ruined nations before us—we are copying, as far as we are able, the worst parts of the British system, leaving out the best—and who are we, that we should be exempt from the law which the Author of the being of all mankind has imposed on them? What is the history of man, and what is he? The young lady who thinks so highly of her Phil-

ander, her Werter, her Sylvio, who will go with him to a certain point—who will go with him to the bottom of the garden, and listen to the nightingale and the mocking-bird, and talk sweet sentiment—but if she goes so far as that she is lost—she had much better go to her grandmamma, and not Philander. So it is with a nation—the man who says, this is but a trifle—a peccadillo—I was absent for a few days from the Senate, but none will think of it—*c'est le premier pas qui coute*—the moment a man leaves the path of religion or virtue—the moment he takes Paley and the Jesuits to ascertain how far he may go on the border line of villany without overstepping it—that man, or woman, is lost. Our situation is awful beyond conception—we are in a state of utter ignorance of ourselves, and perhaps I may be supposed at this time worrying the patience of the Senate, when they would rather I should take my seat. It is my duty to leave nothing undone that I may lawfully do, to pull down this administration. I see it, and only wait till the third of March, 1829—this month three years—and, if the people do not step in to correct the procedure, I am much mistaken if I ever take their part again—and why, sir? I do not think the honor of a daughter is to be preserved at the expense of bars and bolts: for, where the mind is polluted, what care I who has the worthless possession of the body? He who goes out *animò furandi*, is a thief, whether he exacts a purse or not. So it is with a nation. They who, from indifference, or with their eyes open, persist in hugging the traitor to their bosom, deserve to be insulted with different messages than this; they deserve to be slaves, with no other music to soothe them but the clank of the chains which they have put on themselves and given to their offspring.

Mr. BRANCH then varied his motion to the following form:

"The President of the United States, in his opening Message at the commencement of the present session, informed Congress that invitations to this Government to attend and take part in the deliberations at the Congress of Panama had been given and accepted, and that Ministers on the part of the United States would be commissioned: and, having further, in his Executive communication to the Senate of the 26th of December last, accompanying the nomination of Richard C. Anderson, of Kentucky, and John Sergeant, of Pennsylvania, to be Envoys Extraordinary and Ministers Plenipotentiary to the Assembly of American Nations at Panama, and William B. Rochester, of New York, to be Secretary of the Mission, thus expressed himself: 'Although this measure was deemed to be within the constitutional competency of the Executive, I have not thought proper to take any step in it before ascertaining that my opinion of its expediency will concur with both branches of the Legislature, &c. Therefore,

"Resolved, That, in the opinion of the Senate, the proposed measure was not within the constitutional competency of the Executive. And, also, Resolved, As the opinion of the Senate, inasmuch as the claim of power thus set up by the Execu-

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tive, might, if suffered to pass unnoticed by the Senate, be hereafter relied upon to justify the exercise of a similar power, they owe it to themselves, and to the States they represent, to protest, and they do hereby, solemnly but respectfully protest, against the same."

On motion of Mr. MILLS, the resolution was postponed to, and made the order of the day, for Monday next.

TUESDAY, April 4.

*Duty on Salt.*

The Senate then resumed the consideration of the resolution reported by the Committee on Agriculture, proposing to repeal the duty on imported salt.

Mr. HOLMES moved to strike out the obligatory instructions "to report by bill," and insert, "to inquire into the expediency of providing," the effect of which would be, to leave the Committee of Finance a discretion on the subject, instead of instructing them specifically to report a bill; and after a discussion of near three hours' duration, between Messrs. KING, LLOYD, SMITH, HOLMES, BRANCH, FINDLAY, WOODBURY, SANFORD, HAYNE, RANDOLPH, MACON, and CHANDLER, the question was taken on Mr. HOLMES' amendment, and carried, by the following vote:

YEAS.—Messrs. Barton, Bell, Benton, Boulligny, Chandler, Chase, Clayton, Dickerson, Eaton, Edwards, Findlay, Harrison, Hendricks, Holmes, Johnson of Kentucky, Johnston of Louisiana, Kane, Lloyd, Marks, Noble, Robbins, Ruggles, Sanford, Seymour, Smith, Thomas, Van Buren, Willey—28.

NAYS.—Messrs. Berrien, Branch, Cobb, Harper, Hayne, King, Macon, Randolph, Reed, Rowan, Tazewell, White, Williams, Woodbury—14.

Thus amended, the resolution was agreed to.

WEDNESDAY, April 5.

*Obstructions in Savannah River.*

The Senate proceeded to consider, as in Committee of the Whole, the bill "for removing the existing obstructions in the river Savannah."

[This bill appropriates the sum of \$50,000, to be applied, under the direction of the Secretary of the Treasury, for removing certain hulks sunk in the river Savannah during the Revolutionary War, for the defence of the city.]

Mr. LLOYD (the Chairman of the Committee on Commerce) explained the present situation of the river Savannah, and the injurious consequences which resulted to the extensive commerce with the city of Savannah, from the obstructions formed by the hulks which had been sunk, and the sand which had accumulated on them. He dwelt upon the advantages which would result to the commerce of the United States at large, by the removal of these obstructions, and urged the justice of granting to Georgia that assistance, in this case, which had been granted to so many other States on similar occasions.

Mr. BERRIEN supported the bill with great force, and at some length.

Considerable discussion then took place, in which Messrs. BERRIEN, CHANDLER, BRANCH, HOLMES, HARRISON, COBB, FINDLAY, RUGGLES, EDWARDS, and KANE, took part. The bill was supported on the ground that the people of Savannah and Georgia claimed, and were entitled to be restored to, the advantages they enjoyed in the unimpaired navigation of the river anterior to the time when, on considerations of public benefit, they were deprived of them, by the obstructions placed, for the public defence, in the principal inlet of the State. It was the interest of the United States itself to restore to its natural condition this inlet of a great agricultural and commercial State, and an act of justice to the State. It was argued that, wherever the Government of the United States, in prosecuting a war, had destroyed or injured private property, there never was an instance of their withholding payment for it; and wherever the enemy had destroyed property in consequence of its having been used against them by the forces of the United States, this Government had always made compensation; and, on these, and other grounds, urged in the debate, the bill ought to pass. Mr. BERRIEN, in particular, supported the bill earnestly and repeatedly, in answer to objections made to it.

The bill was opposed on the ground that the obstructions were partly placed in the river by the enemy, and the claim could not therefore be well sustained, as it was not incumbent on the United States to repair injuries done by the enemy in particular portions of the country—and that Georgia had received her share of the funds which had been appropriated for settling Revolutionary claims, &c.

In the course of the debate, Mr. CHANDLER moved an amendment, which was carried, confining the expenditure of the appropriation to the raising of those vessels only which were sunk by the American Commander, and not to those sunk by the enemy; and then the bill was ordered to be engrossed for a third reading, by yeas and nays, as follows:

YEAS.—Messrs. Barton, Bell, Benton, Berrien, Boulligny, Branch, Chandler, Chase, Clayton, Cobb, Dickerson, Edwards, Findlay, Harrison, Harper, Hayne, Hendricks, Holmes, Johnson of Kentucky, Kane, King, Lloyd, Marks, Noble, Reed, Robbins, Rowan, Ruggles, Sanford, Seymour, Smith, Thomas, White, Willey, Williams, Woodbury—36.

NAYS.—Messrs. Macon, Tazewell, Van Buren—3.

THURSDAY, April 6.

*Sale of Rent Lead.*

Mr. BENTON rose to ask the leave, of which he yesterday gave notice, to introduce a bill "to authorize the President to dispose of certain lead, the property of the United States, in Missouri."

Mr. B. said, a brief statement of the facts might be necessary, and would save time here-

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after. The bill supposes, said Mr. B., that there is lead in Missouri, belonging to the United States. These are the facts: The United States have received lead for the rent of certain lead mines, and it appears, from the report of the Commissioner, that the lead is in his hands. Not having any authority to dispose of it, by the laws of the United States, he proposes, in his report, to send it to some of the arsenals of the United States. Of the two nearest arsenals, one is at the distance of 1,000 miles, and the other 1,200 miles, from the place where the lead is. The expense of sending 2,000 dollars' worth of lead such a distance as this, independent of the chance of losing it, will be nearly worth the thing itself. I therefore propose, that this lead shall be given for the object specified in the bill; that object is to give it to the State of Missouri for the purpose of making a road from the lead mine to the river Mississippi. My reason for asking to make this disposition of it is this. The United States are the great landholders of all the new States. In the lead mine district, this is particularly the case: for the mineral lands are reserved by law, and cannot be sold. They are found, as elsewhere, in the poorest parts of the country: for, though there are some tracts of rich ground, the body of the country is poor. The mineral lands, which are valuable, are reserved by law; they cannot be sold—and the inferior lands, which are not mineral, are held up at a price which they will not command in some hundreds of years to come. The consequence is, that the United States is the absolute landlord of the great mineral district. There is no person to make roads. It is the landholders in every country who make roads. In all parts of the world, where a landlord possesses an estate, he expends a large proportion of the proceeds of that estate in making roads to it. Where he owns a coal mine, or a lead or copper mine, he expends a portion of the proceeds in making roads to it, for the benefit of his own property. Taken in this point of view, it is the duty of the United States to lay out part of the proceeds to make a road through their own lands. It is also advantageous to do so, because, making a road from the river to the mine, a distance of thirty miles, will give a value to the country itself. I therefore propose to introduce a bill with provisions to this effect.

And leave having been granted, Mr. B. introduced the bill; which was twice read, and referred.

FRIDAY, April 7.

*The Judicial System.*

The Senate proceeded, according to the order of the day, to the consideration of the bill from the House of Representatives, "further to amend the Judicial System of the United States."

The Senate Committee on the Judiciary, to which the bill was referred, reported a substitute for the second section of the bill. This

section of the bill, as it came from the House, is, in substance, as follows:

"That the seventh Judicial Circuit of the United States shall, hereafter, consist of Ohio, Indiana, and Illinois; and Kentucky and Missouri shall form an eighth Circuit; Tennessee and Alabama a ninth Circuit, and Louisiana and Mississippi a tenth Circuit; and the Justice of the Supreme Court now assigned or allotted to the seventh Circuit, shall, until the next term of the Supreme Court, and until a new assignment or allotment shall be made by said court, be assigned to the eighth Circuit; and the three additional Justices, whose appointment is provided for by this act, shall be severally assigned by the President of the United States to the said seventh, ninth, and tenth Circuits, until the next term of the Supreme Court, when it shall be the duty of the Justices thereof to assign or allot themselves to the several Judicial Circuits of the United States, and to make record thereof according to law."

The substitute for this section, recommended by the committee of the Senate, is as follows:

"That the seventh Judicial Circuit of the United States shall hereafter consist of Ohio and Kentucky; and that Indiana, Illinois, and Missouri, shall form the eighth Circuit; Tennessee and Alabama shall form the ninth Circuit; and Mississippi and Louisiana shall form the tenth Circuit; and the Justice of the Supreme Court appointed for each of said seventh, eighth, ninth, and tenth Circuits, shall reside therein."

On the question of agreeing to this amendment, Mr. VAN BUREN rose, and addressed the Senate as follows:

In noticing the proposed amendments, I shall give my own views, and, as far as I understand them, the views of the majority of the committee, in relation to the bill under consideration. The ample discussion which the subject has so recently undergone elsewhere, and which, though not heard, has been seen, by the Senate, will induce me to omit many observations which I might otherwise have felt it my duty to make.

The committee propose two amendments to the bill from the House of Representatives. They consist of an alteration of the seventh and eighth circuits, and a provision requiring the new judges, as is now required of the present judges, to reside in their respective circuits. In the bill as it stands, Kentucky and Missouri form one circuit, and Ohio, Illinois, and Indiana, another. The amendment connects Kentucky with Ohio, and forms the other circuit out of the districts of Missouri, Illinois, and Indiana. The amendment relative to the residence of the judges shall be noticed in the course of my remarks on the general subject. Of the other amendment I shall say but little. I was absent, on account of indisposition, when that amendment was discussed and decided in the committee. The explanation of its reasons will therefore be left to those by whom it was made, and who are more conversant with its merits. A bill was reported by me, in behalf of the committee, early in the

session, by which the circuits were arranged as they are in the bill from the House. Subsequent to the report, it was ascertained that, out of the ten Senators representing the States included in the two circuits, seven were dissatisfied with that arrangement. They contend that it is unnatural, with reference to localities, unnecessary as it respects the state of the business, and will be inconvenient in its operation.

The question is exclusively of a local character, and the reasons for the opinion sustained by the amendment will be given by those particularly interested.

The bill proposes an alteration of the existing legislative provision on the subject of the judicial system, by adding three additional judges to the Supreme Court, and to increase the number of circuits from seven to ten. It is admitted that the change is important, and ought not to be made except upon the most urgent inducements. It is my object to state briefly and distinctly, the nature and extent of those inducements.

The grounds of complaint are :—

1st. The unavoidable accumulation of business in the Supreme Court :

2d. The great amount of unfinished business in the Seventh Circuit, composed of the States of Ohio, Kentucky, and Tennessee, which cannot, it is alleged, be disposed of under the present arrangement :

3d. The exclusion of the six States last admitted into the Confederacy, viz : Illinois, Missouri, Indiana, Alabama, Mississippi, and Louisiana, from the benefit of the Circuit System.

Our first inquiries should be directed to the facts upon which these complaints are founded, and the character and extent of the alleged evils.

I obtained, last year, a certificate from the clerk of the Supreme Court, which has been mislaid, but the amount of which, as far as my recollection serves me, was, that of the causes on the calendar for the last ten years, one-half were left undisposed of at each term.

This is an evil that is everywhere felt and complained of. Its existence is universally admitted, and in many cases it amounts to a denial of justice.

The seventh circuit, as I have already stated, is composed of the districts of Ohio, Kentucky, and East and West Tennessee. The mischief complained of arises partly from the great extent of country embraced in the circuit, the immense distance from court to court, and partly from the great amount of litigation in that portion of the Union. Upon the first branch of this subject—the great extent of the circuit, remarks are unnecessary ; the facts are open to the observation of all. In one of the memorials on the table, the extraordinary extent of travel which the judge has to perform, and the difficulties of doing so, are fully stated. Upon the second, a few remarks may not be unprofitable. It is said, and upon good authority, that there are now pending in the Ken-

tucky District, 950 causes ; in Ohio, about 200 or 250, and in East and West Tennessee, about 300 ; in all, about 1,500 causes. Although these facts are doubtless as stated, still, to many of us the statement, unless explained, would present an exaggerated and deceptive view of the *real* business in the circuit referred to.

By the laws of the United States, and the rules of the Supreme Court, made in pursuance thereof, the practice in the Circuit Courts of the United States has been assimilated to that of the Superior Courts of the States. That of the latter is various. Whilst in some of the States every *pending* cause, whatever be its nature or condition, is placed upon the docket, in others, such only as are to be tried upon issues either of law or fact : the former appears to be the practice in the seventh circuit. Of the 950 causes pending in the Kentucky District, there are, therefore, in all probability, not more than 250 which require to be tried ; the others pass by default, or are otherwise disposed of ; and the same estimate may, with safety, be made of the business in the other districts in the circuit.

That there is, notwithstanding, a greater amount of business in those districts than the court can perform, constituted as the circuit now is, appears from representations which have been made from time to time to Congress, coming from sources deserving entire confidence. It may appear strange to gentlemen that a circuit, so little commercial, and of a population inferior in point of numbers to several of the old circuits, should be so greatly overburthened with business, whilst in the others, the judges cannot only do all the present business, but might, without much inconvenience, do more. The fact is in part attributable to the great length of time necessarily employed by the judge in travelling, but chiefly to another cause. By the Constitution of the United States, jurisdiction is given to the Federal Judiciary, among other things, in "all cases between citizens of the same State, claiming lands under grants of different States." A very great proportion of the causes pending in these courts concern the title to lands thus circumstanced. The United States Court derive from this branch of their judicial power an incomparably greater access of business in the circuit in question, than they do in any portion of the old States. Such is briefly the actual condition of things in the seventh circuit. Of the courts, its inhabitants do not, nor have they any reason to complain—as much has been done for them as the number of the judges and the situation of the judicial system would admit of. From Congress they have had the assistance that has been given to the same, and even larger numbers of citizens, in other sections of the country, and more than has been given to some. They have, therefore, no ground for any thing like clamorous complaint, nor am I aware that they have made it—to us they certainly have not. But

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as they clearly suffer inconvenience—as the cause of the evil is without their fault and beyond their control, they have a right to ask present redress; and the bill on the table proposes to give it as far as that can be done consistent with the interests of the other States. The remaining ground of complaint is the condition of the six States to which the circuit system has not been extended. The following is the state of this part of the case:—The other States have District Courts, which are held by district judges, receiving salaries of from eight to sixteen hundred dollars. They have also Circuit Courts, held by one of the justices of the Supreme Court, together with the District Judge. In all judgments and decrees in civil suits, for an amount over fifty dollars, a right of appeal is secured from the District to the Circuit Court, and a similar right to appeal from the Circuit to the Supreme Court, where the matter in controversy exceeds two thousand dollars. In all cases, civil or criminal, where a difference of opinion exists between the circuit and district judge, the matter is certified to the Supreme Court, and decided by them, and such order taken in the court below, as the Supreme Court shall direct. No imprisonment is allowed, or punishment inflicted, when the judges are so divided. Such is the provision made for the States which have been admitted to a full participation of the judicial system of the United States.

In the petitioning States, the situation of things is very different. Instead of the Circuit Courts thus constituted, provision is made by law to vest the District Courts with Circuit Court powers, so far at least as it relates to the original jurisdiction of the Circuit Courts. The appellate jurisdiction of the Circuit Court could not of course be vested in the District Court. An appeal lies from the District Court directly to the Supreme Court, similar to that allowed in other States from the Circuit Court to the Supreme Court, which it has been seen lies only where the matter in controversy exceeds the value of two thousand dollars. The injustice and inconvenience resulting from this system to the States in question, is supposed to consist—

1st. In depriving them in the *first instance* of the talents, experience, and learning, of a judge of the Supreme Court, who, from the higher duties he is expected to perform—from the greater inducement held out to men of talents, by larger salaries, and increased respectability, it is but reasonable to presume, would be far superior in point of capacity and respectability to the district judge.

2d. In cutting them off from an appeal in all matters in controversy between fifty dollars and two thousand dollars—an evil which, they say, cannot be redressed without the establishment of Circuit Courts, as it would not be a relief to suffer causes of a less amount to be carried from remote parts of the Union to the City of Washington.

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3d. That, although they have a right of appeal in all cases of over two thousand dollars, they can only have it to the Supreme Court in the first instance, and are thus deprived of the benefit of the first appeal to the Circuit Court, by which justice might be obtained at less expense.

4th. That, in criminal cases, in which no appeal is provided in any case, and which may involve life, character, and liberty, they are deprived of the advantage of a judge of the Supreme Court, and of the humane provision requiring the assent of two judges before punishment.

5th. That they have been admitted into the Union upon equal terms with the old States—that one of the great advantages secured to them by the condition of their admission, is a full participation in the perfect administration of justice, now enjoyed by their sister States, and that the withholding it is an act at once hostile to their best interests, and, what is equally interesting, humiliating to their pride.

This subject has been frequently before the Senate, and the Judiciary Committee. I have bestowed upon it, at different times, that deliberation and dispassionate attention which the wishes and the interests of so many members of the confederacy imperiously require. The result is a strong conviction, that there is, at least, some justice in each of the grounds of complaint made by the petitioning States, and enough in all of them, to make it the duty of Congress to make some suitable provision for their relief.

Whilst, however, I concede thus much, I am not willing to be understood as uniting, or even so much as acquiescing in the vehement complaints, which it has of late become fashionable to make, for having, as it is alleged, withheld from those States, rights which ought long since to have been granted to them. The petitioning States have been treated in this respect (circumstances considered) with as much favor, and have received as full a measure of justice as has been meted to those of their sister States, which have been admitted into the Confederacy since the adoption of the constitution.

The right of an ultimate participation of every new State in all the privileges and immunities enjoyed by the other States under the constitution as far forth as her situation enables her to enjoy them, and from which she is not precluded by the condition of her admission, is undoubted. But the immediate and entire extension of those privileges has never been regarded as a matter of imperative duty. The courtesy of the States, and general justice of their citizens, (if other considerations have not,) have, from the beginning, induced an acquiescence in a different rule, viz: that the measure should be a progressive one, to be completed as soon as a due regard to circumstances would admit. On a reference to the history of the Government, in this particular,



it will be found, that the States now in question have fared as well, and better, than those admitted before them. Vermont and Maine, it is true, had the benefit of the circuit system soon extended to them. But it was because their local situation enabled the judges to hold circuits there without creating a necessity for increasing the number of the judges, or unreasonably increasing their duties. But towards States differently situated, a different course has been pursued, without producing any of those acrimonious complaints, of which we have lately heard and seen so much. Kentucky was admitted fifteen years before the circuit system was extended to her—Ohio four years, and Tennessee eleven. Missouri has been admitted but four years—Alabama but four—Illinois but seven—Mississippi but eight—Indiana but nine—and Louisiana but thirteen.

Nor has the matter been looked upon by the States in question in so grievous and offensive a light. As far as my knowledge extends, the States of Louisiana, Missouri, Illinois, and Alabama, have not, as yet, memorialized us upon the subject, and the representations of Mississippi and Indiana have been precisely such as they should be.

I mention these circumstances, not only to vindicate the Government from supposed injustice to so large a part of the Western States, but to allay whatever of censure and contagious excitement the collisions of opinion elsewhere may have produced, and which is always adverse to that calm and dispassionate consideration which this subject, above all others, demands.

The committee are all of opinion that relief of some sort is required, and that it should now be given. The next question is, what should that relief be—what can it be? The States asking our interference, point out no specific mode in which their wrongs should be redressed, but submit themselves to the wisdom of Congress.

It may with great truth be said, that there has not, for many years, been any subject presented to Congress of greater difficulty. It is admitted to be so by all. No less than four different plans have, for the last three years, been submitted to the Senate without success. The present bill was reported at the last session, received the assent of a majority of the Senate, but did not pass for want of time. The great difficulty arises from the extent of country to which the system must be made to apply. If you do justice to the circuit courts, you are unavoidably met by the danger of making the judges on the Supreme Bench too numerous.

I speak of the system that now exists, a system established by those who formed the constitution—departed from in 1801, but restored by the act of 1802, and persevered in to the present day. As the subject on which the system was to operate extended, Congress have extended it. Nothing is clearer than that for

the old thirteen States, a better plan has not been needed, if the wit of man could have devised one. It is certain, that existing enactments do not carry the system over the whole ground. It must be so extended, or a new one established. The question is, whether that can be done—whether the country has not so far outgrown the system, as to render it necessary that it should be abandoned, and a new one substituted, more capable of extension.

Shall we do as was done in 1807, when circuit courts were provided for Ohio, Kentucky, and Tennessee, or shall we strike out a new path? But little reflection can be necessary to convince the most superficial observer that to do so would be a matter of great delicacy. To change the entire judicial system of a country, and especially of a country whose form of Government is so complicated as ours, can never be a matter of light import. If there be a case in which, more than any other, the hand of innovation should be watched with lynx-eyed jealousy, this is surely that case. A total change was made in 1801, but the measure met with a total overthrow in one short year. Strong as the feelings then produced were, time and experience have demonstrated the wisdom of the act of 1802, by which the system of 1789 was restored and improved. Men who then saw, or thought they saw, the prostration of the fairest and firmest pillar in the edifice, have been enabled by observation and more dispassionate reflection, to see the error of impressions made by the excitements of the moment, and, what is of equal value, have had the wisdom and the honesty to acknowledge their conversion to better and sounder opinions. But let us, instead of submitting ourselves to the influence of general opinions, examine into, and consider, the substitutes which have, from time to time, been proposed.

The plans proposed at different times have been the following:

1st. To continue the present system and appoint circuit judges for the six new States, with a provision for their ultimate advancement to the Supreme Court, as vacancies occur on the bench.

2d. To revive the old system of 1801, appoint circuit judges, and confine the judges of the Supreme Court to the discharge of term duties.

3d. To direct the circuits to be held by the district judges, allotting three to a circuit.

4th. To increase the number of the judges of the Supreme Court, and of the circuits, according to the provisions of the bill upon the table.

Each of the three first-mentioned schemes has advantages, but, upon careful consideration, they have all been found liable to insurmountable objections. I will briefly consider the plan of having circuit judges for the six Western States only. A bill to that effect was, a session or two since, reported by the Judiciary Committee of the other House, and has

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been proposed by way of amendment in this. So far from being received as a measure of favor to the States interested, it produced nothing but excitement of the most unpleasant character. The earnest dissatisfaction manifested by the Western members was certainly not without cause. They reasoned thus—We have done without the circuit system until this time, and we have not complained, because it has not been the course of the Government to extend that system at once, but gradually, and according to circumstances. As long as a compliance with our request is found impracticable, or so greatly inconvenient as to amount to an impracticability, we will still wait. But when you make provision, covering the whole ground, and by that provision place us permanently, or nearly so, upon a footing inferior, in point of utility and respectability, to our sister States, who are but our equals, then our State pride is justly alarmed, and we cannot, in justice to the States we represent, submit to what they will regard as a degradation. So, sir, they reasoned, and it was soon seen that the measure ought not to be persisted in. It has, therefore, been abandoned in both Houses.

I will next notice *the Circuit System of 1801*. Some seven or eight years ago, a bill to that effect passed the Senate, and was fortunately not acted upon in the other House. Independent of the paramount objections which exist against this and every other plan, which, either directly or by probable consequence, separates the Justices of the Supreme Court from the circuits, there are others deserving consideration. A less number of circuits than ten would not be thought of. There are now, I think, twenty-seven district judges. They hold their office during good behavior, and many of them have spent the best portions of their lives in that situation, and become, more or less, dependent upon their places for their support, and that of their families. To remove them, therefore, by abolishing their courts, if a consolidation of the District and Circuit Courts should be thought desirable, could not fail to be regarded as a harsh measure. To keep them in office, receiving salaries without performing service, is so hostile to the character and genius of our Government and the sentiments of the people, that public opinion would not tolerate it. It would, therefore, be necessary to appoint ten new judges at least, which, added to the District and Supreme Court judges, would make forty-four judges of the United States Courts, independent of the territorial judges. It is certainly true, that the business of the courts would not furnish employment for this great number of judges. The high duties imposed upon them, imperiously require that men of talents of a particular order, should be selected for the new appointments. To obtain them, fair salaries will be indispensable; for men of such character could not, and would not, give up their business without an equiva-

lent. It is, therefore, highly probable, that the expense of this system, the circumstance (always looked upon with much jealousy) of creating so many offices of so stable and irresponsible a tenure, and the seal of condemnation once placed upon this measure, would excite, indeed, could not fail to excite, great dissatisfaction. At the same time, it is due to the subject to state, that if there were no other objections to the system, and if the business of the courts would furnish sufficient employment, the expense ought not to be regarded, as there is nothing more true, than that the judicial department of the Government is, by far, the least expensive. Upon a reference, it will be found, that the whole expense of the judiciary, including marshals, &c., &c., does not exceed the sum of about three hundred thousand dollars per annum.

The remaining scheme is that of directing the Circuit Courts to be held by the district judges. A plan to this effect was digested, and a bill reported to the Senate two sessions ago. It was explained, considered, and laid over. As far as inferences could be drawn, it did not meet with favor. A leading objection was, the supposed incapacity of the district judges, arising from the circumstance that they had originally been selected for the performance of duties supposed to be of an inferior grade, and that they were allowed salaries of so limited an amount, that the selection had, of necessity, been more confined than was desirable. I confess that, if I could consent to any system which separated the Justices of the Supreme Court from the circuits, I would prefer the one now referred to. Much may be said to obviate the objection raised, but as the committee have abandoned it, as no such proposition has been, or, as far as I can judge, is likely to be made, and as I am, for the reasons I shall hereafter give, opposed to that, or any other system like it, in the great point I have alluded to, I will not, at this time, detain the Senate by further comment upon it.

But there are objections of a more general character to the adoption of either of the plans I have spoken of.

By the present judiciary act, it is provided, "that the laws of the several States, except where the constitution, treaties, or statutes of the United States, shall otherwise require or provide, shall be regarded as *rules of decision* in trials at common law, in courts of the United States, in cases where they apply."

In many, if not most, of the controverted cases between individuals, of which the Federal Courts derive jurisdiction from the character of the parties, the titles under which they claim, or from other sources, the local or State law forms the rule of decision. An intimate knowledge of that is, therefore, an indispensable qualification for a judge of the Supreme Court. The difficulty of acquiring and retaining it is infinitely greater than would, on first impression, be supposed. Of the twenty-four States,

there are not two, whose laws, affecting the rights of persons and property, are, in all respects, the same. Between many the differences are as great as is usual between States on different continents. Each has an established system, wholly unconnected with its sister States. This system is composed of portions of the English common law, adopted with various modifications and alterations, of more or less of the principle of the English Equity system, of the statutes of the States, and the constructions which have, from time to time, been put upon them by the State Judiciaries. It is true that these are all to be found in books, but we well know how little apt men are, when they can avoid it, to study subjects of this description, and men of experience in these things know the extreme difficulty, not to say impracticability, of making one's self at all familiar with them in any other way than by actual practice in the courts, either in examining them for argument, or in deciding them from day to day.

The importance of a full knowledge of the local law is greater in the Western States, than in the rest of the Union. This arises from the fact of so great a portion of the territory of those States having recently belonged to foreign Governments, and so many of the titles to lands, of consequence, dependent upon the laws, colonial as well as those of the mother country, before their cession to the United States. It arises, also, from other peculiarities in the titles to land in such of the Western States as are not thus situated. The addition of three justices, therefore, from that portion of the country, would bring to the bench of the Supreme Court a stock of valuable knowledge, of which it would be deprived, if either of the plans spoken of were adopted. Again: by compelling the judges of the Supreme Court to hold the circuits, the knowledge they have acquired of the local laws will be retained and improved, and they will thus be enabled, not only the better to arrive at correct results themselves, but to aid their brethren of the court who belong to different circuits, and are, of course, deprived of an opportunity to acquire such information, except in that manner. There is another consideration belonging to this branch of the subject, entitled to great weight. It is impossible, with the best intention on the part of the Executive branch of the Government, to avoid bad appointments. Influence and favoritism sometimes prevail, and to a want of correct information the Government is always exposed. Incompetent men, therefore, will sometimes be appointed. If confined to the discharge of term duties only, the country may be saddled with them during their whole lives. They might assent or dissent at terms, and the kindness of their brethren, and their respect for the character of the court, would induce them to do the rest. But the case is greatly otherwise, if they are obliged to preside at circuits, to discharge their high du-

ties in the face of the people, unaided by their brethren of the bench. There is a power in public opinion in this country—and I thank God for it: for it is the most honest and best of all powers—which will not tolerate an incompetent or unworthy man to hold in his weak or wicked hands the lives and fortunes of his fellow-citizens. This power operates alike upon the Government and the incumbent. The former dare not disregard it, and the latter can have no adequate wish that they should, when he once knows the estimation in which he is held. This public ordeal, therefore, is of great value; in my opinion, much more so than what has, with some propriety, been called the *scare-crow* of the constitution—the power of impeachment.

But there is still another view of the subject, bearing, with irresistible force, against the separation of the Justices of the Supreme Court, under any circumstances, from the Circuit Courts, and against the adoption of any system, which, though it does not directly, may, ultimately, lead to that result.

By the act of 1792, the justices were left at liberty to distribute themselves among the different circuits annually. By the act of 1802, they were attached, by law, with a single exception, (Judge Washington,) to the circuit in which they resided; and the act of 1807, adding one justice to the number, made it his duty to reside in the seventh circuit. Time and experience, the best of all tests, have shown that this provision, also, of the much-abused act of 1802, was a wise and salutary one. The amendment proposed by the committee, preserves that feature of the acts of 1802 and 1807, by requiring that the three new judges shall reside in their respective circuits. To its propriety, I believe, no serious objection will be made, here or elsewhere.

Hitherto, the Justices of the Supreme Court have resided in the States, and with a single individual exception, within their respective circuits. Before the act of 1802, because the principal part of their business was there; since 1802, because the law made it their duty. If other provision is made for holding the circuits, the whole business of the Justices of the Supreme Court would be done here, and, sooner or later, they would, in the natural course of things, all move to, and permanently reside at, the seat of Government.

From that result, inferences, of a contrary character, but uniting in deprecating its policy, are drawn. Some think they see in it danger to the court, others apprehend danger from the court. In my judgment both are right.

It has been justly observed elsewhere, that "there exists not upon earth, and there never did exist, a judicial tribunal clothed with powers so various and so important" as the Supreme Court.

By it, treaties and laws, made pursuant to the constitution, are declared to be the supreme law of the land. So far, at least, as the acts of

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Congress depend upon the courts for their execution, the Supreme Court is the judge, whether, or no, such acts are *pursuant to the constitution*, and from its judgment there is no appeal. Its veto, therefore, may absolutely suspend nine-tenths of the acts of the National Legislature. Although this branch of its jurisdiction is not that which has been most exercised, still instances are not wanting in which it has disregarded acts of Congress, in passing upon the rights of others, and in refusing to perform duties required of it by the Legislature, on the ground that the Legislature had no right to impose them.

Not only are the acts of the National Legislature subject to its review, but it stands as the umpire between the conflicting powers of the General and State Governments. That wide field of debatable ground between those rival powers is claimed to be subject to the exclusive and absolute dominion of the Supreme Court. The discharge of this solemn duty has not been unfrequent, and, certainly, not uninteresting. In virtue of this power, we have seen it holding for naught the statutes of powerful States, which had received the deliberate sanction, not only of their Legislatures, but of their highest judicatories, composed of men venerable in years, of unsullied purity, and unrivalled talents—statutes, on the faith of which immense estates had been invested, and the inheritance of the widow and the orphan were suspended. You have seen such statutes abrogated by the decision of this court, and those who had confided in the wisdom and power of the State authorities, plunged in irremediable ruin. Decisions—final in their effect, and ruinous in their consequences. I speak of the power of the court, not of the correctness or incorrectness of its decisions. With that we have here nothing to do.

But this is not all. It not only sits in final judgment upon our acts, as the highest legislative body known to the country—it not only claims to be the absolute arbiter between the Federal and State Governments—but it exercises the same great power between the respective States forming this great Confederacy, and *their own citizens*. By the Constitution of the United States, the States are prohibited from passing "any law *impairing the obligation of contract*." This brief provision has given to the jurisdiction of the Supreme Court a tremendous sweep. Before I proceed to delineate its tendency and character, I will take leave to remark upon some extraordinary circumstances in relation to it. We all know the severe scrutiny to which the constitution was exposed. Some from their own knowledge—others from different sources. We know with what jealousy—with what watchfulness—with what scrupulous care its minutest provisions were examined, discussed, resisted, and supported, by those who opposed, and those who advocated its ratification. But, of this highly consequential provision—this provision which car-

ries so great a portion of all that is valuable in State legislation to the feet of the Federal Judiciary, no complaints were heard—no explanations asked—no remonstrances made. If there were, they have escaped my researches. It is most mysterious, if the constitution was then understood, as it now is, that this was so. An explanation of it has been given—how correct I know not.

The difficulties which existed between us and Great Britain relative to the execution of the treaty of peace, are known to all. Upon the avowed ground of retaliation for the refusal of England to comply with the stipulation on her part, laws were passed, between the years 1783 and 1788, by the States of Virginia, South Carolina, Rhode Island, New Jersey, and Georgia, delaying execution, liberating the body from imprisonment on the delivery of property, and admitting executions to be discharged in paper money. Although those laws were general in their terms, applicable as well to natives as to foreigners, their chief operation was upon the British creditors, and such was the leading design of their enactment. England remonstrated against them as infractions of the stipulation in the treaty, that creditors, on either side, should meet with no impediments to the recovery of the full value, in sterling money, of all debts previously contracted, and attempted to justify the glaring violations of the treaty, on her part, on that ground. An animated discussion took place between the Federal Government and Great Britain, and between the former and the States in question, upon the subject of the laws referred to, their character and effect. It was during this time that the constitution was formed and ratified. It is supposed that the difficulties, thus thrown in the way of adjustment with England, through the acts of the State Governments, suggested the insertion in the constitution of the provision in question, and that it was under a belief that its chief application would be to the evil then felt, that so little notice was taken of the subject.

If it be true, that such was its object, and such its supposed effect, it adds another and a solemn proof to that which all experience has testified, of the danger of adopting general provisions for the redress of particular and partial evils. But, whatever the motive that led to its insertion, or the cause that induced so little observation on its tendency, the fact of its extensive operation is known and acknowledged. The prohibition is not confined to express contracts, but includes such as are implied by law, from the nature of the transaction. Any one, conversant with the usual range of State legislation, will, at once, see how small a portion of it is exempt, under this provision, from the supervision of the seven Judges of the Supreme Court. The practice under it has been in accordance with what should have been anticipated.

There are few States in the Union, upon

whose acts the seal of condemnation has not, from time to time, been placed by the Supreme Court. The sovereign authorities of Vermont, New Hampshire, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, Missouri, Kentucky, and Ohio, have, in turn, been rebuked and silenced, by the overruling authority of this court. I must not be understood, sir, as complaining of the exercise of this jurisdiction by the Supreme Court, or to pass upon the correctness of their decisions. The authority has been given to them, and this is not the place to question its exercise. But this I will say, that, if the question of conferring it was now presented for the first time, I should unhesitatingly say, that the people of the States might, with safety, be left to their own legislatures, and the protection of their own courts.

Add to the immense powers of which I have spoken, those of expounding treaties, so far, at least, as they bear upon individuals, citizens, or aliens, of deciding controversies between the States of the Confederacy themselves, and between the citizens of the different States, and the justice of the remark will not be questioned, that there is no known judicial power so transcendently omnipotent, as that of the Supreme Court of the United States!

Let us now, for a few moments, consider the influence which this ought to have upon our legislation. It would not be in accordance with the common course of nature, to expect that such mighty powers can long continue to be exercised, without accumulating a weight of prejudice that may, one day, become dangerous to an institution which all admit to be of inestimable value. It is true, as has elsewhere been said, with apparent triumph, that the States, whose legislative acts have successively fallen under the interdiction of the court, have excited little or no sympathy on the part of their sister States, and, after struggling with the giant strength of the court, have submitted to their fate. But, sir, it is feared that this will not always be the case. Those who are most ardent in their devotion to this branch of the Government, knowing the feelings produced by these decisions in the States affected by them—sensible that those feelings are rather smothered than abandoned, upon conviction of their injustice, fear that, by adding another and another State to the ranks of those who think they have reason to complain, an accumulation of prejudice may be produced, that will threaten, if not endanger, the safety of the institution.

Seeing, and feeling, and fearing this, they, with wise and patriotic foresight, wish to adopt every measure which will retain and increase, as far as practicable, the general confidence in the court, and to avoid such as may, by possibility, have a tendency to weaken it. No reflecting man can doubt, that the residence of the Judges of the Supreme Court in the States, being subject in their persons, family, and es-

tates, to the laws of the State—portions of their families, as is frequently the case, members of the State Governments, and themselves only temporarily absent—going in and out before the people of the States, and commanding their confidence by the purity of their lives, and the modesty of their demeanor—enforcing and expounding their own decisions in the face of the different classes of the community at the circuits, and in free and familiar intercourse with those who have such great influence in giving a proper direction to public opinion on legal subjects—must have an infinitely greater tendency to enable the judges to sustain themselves in the honest discharge of their high duties, than if they were cut off from all connection with the States. Greater than if they were settled in this metropolis, and to the great mass of the people of the States unheard and unseen, but felt in their power, through the remotest borders of the Union—and how felt, sir? Not as is the case with the other branches of the Government—in extending favors, in munificent grants, and all the various measures of relief—no, sir, always on one side, and not unfrequently on all sides, their measures are regarded as harsh and vindictive. Their business is to punish the guilty, to restrain the vicious, to curb power, and to correct its excesses. Such acts are necessary to the well-being, to the very existence of society, but are not those which have the strongest tendency to conciliate popular favor. It is to effect this object, in part, that the friends of the bill, as I cannot but think wisely so, zealously resist every measure which will or may separate the Justices of the Supreme Court from the circuits, and bring them to this city. But this is not the only, or the most interesting view, which may be taken of the subject. The political character of the court, so far as it becomes its duty to pass on the laws of the respective States, affecting personal rights, has already been referred to. A few cursory observations upon the character and tendency of its jurisdiction, so far as it relates to the powers of the General and State Governments, considered as independent, and, in many respects, rival States, will conclude my remarks on this branch of the subject.

The unfortunate extent of the grounds of collision between the respective Governments, has already been referred to. It was beyond the wit of man, in the constitution of a Government like ours, to have wholly avoided it, and it can only be lessened by mutual forbearance and explanatory amendments. He must be but a superficial observer of events, who is not sensible that it is a subject which is every day attracting more of public attention and solicitude. There are those, sir, and they are neither small in number, nor light in character, who think that the uniform tendency of the political decisions of the Supreme Court has been to strengthen the arm of the General Government, and to weaken those of the

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States. Such men think that danger to the State Governments is to be apprehended from permanently fixing the Judges of the Supreme Court at the seat of the Federal Government. They fear (to use an expression, though not literally applicable here, still so well conveys the idea) that it would be "establishing a power behind the throne stronger than the throne itself." Thus thinking, they commenced, as far back as the now vindicated, but formerly much-abused, act of 1802, to confine the Justices of the Supreme Court to their respective circuits, and that course has been persevered in to the present day. They think the inevitable tendency of a change would be for the worse—that, if the judges come here under the eye of the Government, prominent parties as they always must be to all collisions between the respective Governments, they could not fail to embark more strongly in the feelings of men in power here, than they now do.

Sir, this has become a subject on which it is difficult for one to speak without unpleasantly encountering the strong opinions entertained on different sides of the question. On the one hand, expressions of distrust and dissatisfaction are heard, of a character so strongly marked, as to defeat their object and recoil upon their authors. On the other, a sentiment, I had almost said, of idolatry for the Supreme Court, has grown up, which claims for its members an almost entire exemption from the fallibilities of our nature, and arraigns with unsparing bitterness the motives of all who have the temerity to look with inquisitive eyes into this consecrated sanctuary of the law. So powerful has this sentiment become—such strong hold has it taken upon the press of this country, that it requires not a little share of firmness in a public man, however imperious may be his duty, to express sentiments that conflict with it. It is nevertheless correct, sir, that in this, as in almost every other case, the truth is to be found in a just medium of the subject. To so much of the high-wrought eulogies (which the fashion of the times has recently produced in such great abundance) as allows to the distinguished men who now hold in their hands that portion of the administration of public affairs, talents of the highest order and spotless integrity, I cheerfully add the very humble testimony of my unqualified assent. That this uncommon man who now presides over the court, and who I hope may long continue to do so, is, in all human probability, the ablest judge now sitting upon any judicial bench in the world, I sincerely believe. But to the sentiment, which claims for the judges so great a share of exemption from the feelings that govern the conduct of other men, and for the court the character of being the safest depository of *political power*, I do not subscribe. I have been brought up in an opposite faith, and all my experience has confirmed me in its correctness. In my legislation upon this subject, I will act in conformity to those opinions. I be-

lieve the Judges of the Supreme Court (great and good men as I cheerfully concede them to be) are subject to the same infirmities, influenced by the same passions, and operated upon by the same causes that good and great men are in other situations. I believe they have as much of the *esprit du corps* as other men: those who act otherwise, form an erroneous estimate of human nature; and if they act upon that estimate, will, soon or late, become sensible of their delusion.

I conscientiously believe, that, to bring the Judges of the Supreme Court to the seat of the General Government, and making them, as it were, a part of the Administration—for such, it is to be feared, would soon be its effect—would bode no good to the State Governments. With feelings for the General Government, as I humbly hope, purely catholic, I firmly believe, and my daily experience confirms that conviction, that much, very much of the present prosperity of the country and its institutions, depends upon the successful action of the State Governments, and that the preservation of their rightful powers is the *sine qua non* of our future welfare. I will not, therefore, give my assent to any measure which may still further disqualify the States to sustain themselves in those collisions of power which are unavoidable, and in which the situation of the parties is already so unequal. I believe a different disposition of the Judges of the Supreme Court from that provided by this bill, would have such effect, and I am, therefore, most decidedly opposed to it. Sir, it would be strange if the tendencies of this high tribunal were not such as I have supposed; unless, indeed, they were more or less than men. It is not only made by this Government, and sustained by this Government—its members not only owe to it all they have and are to be, but they are the only portion of it that is permanent, that is beyond the reach of any power known to the constitution. The billows of faction may run mountain high, and yet reach not them. The indignant voice of an abused people may, at stated periods, sweep by the board every other portion of the men in power—may take from them the little brief authority under which they have strutted their busy hour upon the stage, and cause them to be seen no more—but the Supreme Court alone, "can never be palsied by the will of its constituents." And, sir, all things considered, it is best that it is so.

I know well, that the opinion that the tenure of the office of the Justices of the Supreme Court is the rotten part of the constitution, is entertained by men who have established for themselves imperishable claims to the characters of saviors of their country, and benefactors of the human race. Of men, whose opinions on other subjects must save this Government, if it be saved at all. I am not of that sentiment—my pursuits in life, and early and constant connection with the courts, may have given an undue bias to my opinions: but from

whatever cause it may proceed, such are my views. Whether it might not have been wise, so far to have imitated the example of the country from which we have derived so much of our jurisprudence, as provides for the removal of the judges on the application of a certain and great portion of the Legislature, is another question; but I have no hesitation in saying, that rather than adopt the sentiments I have referred to, and which have sometimes been broached upon this floor, I greatly prefer that things should be as they are. But whilst I do so, I cannot forget what the experience of all ages has demonstrated, the tendency of power to its abuse, and the consequent duty of those entrusted with its investment, to keep its possessors as far as practicable from temptation.

I have done with this branch of the subject. My argument leads to the conclusion, if it be correct, that no bill which separates the judges from the circuit duties can be correct; the bill under consideration avoids that supposed evil, and the question is—does it effect what is desired? and is it, or is it not, obnoxious to objection of an insurmountable character?

By lessening the duties of the judge in the seventh circuit, he will be enabled to do what he cannot now do, attend at Washington one month sooner, and unite with his brethren in holding the Supreme Court one month longer. The duties of the other judges, old and new, will be such as to enable them to do the same. The consequence cannot, therefore, I think, fail to be, that, if this bill, and the other bill on your table, pass, all delay in the Supreme Court will soon be removed. As to the circuit system, there exists not to my knowledge any complaint against it in the Atlantic States. I am sure there is no good ground for any. If additional circuits should be necessary in the western districts of New York and Pennsylvania, the present justices of those circuits can easily hold them. All that the Western States want is, to have the circuit system extended to them as we have it. No one doubts that, with the addition of these additional judges, a sufficient number of circuit courts can be held in all the districts in the Union to do all the business.

It has been supposed, that at some future day the exigencies of the country will require a different system. I see no good reason for such an opinion. I do not understand why this system may not well be looked upon as calculated to secure the purposes of its institution in all time. At all events, it will for our day; and for what is to come after, "sufficient unto the day is the evil thereof." There is, in my judgment, but one objection to the system or the bill, and that is the number of the judges. I wish they could be less, but they cannot. If the number is an objection, it is an unavoidable one. But I confess that this objection does not loom half so large to my eyes as it once did. Perhaps it is because I have made myself more familiar with its observation than before. Per-

haps from more accurate reflection. For some purposes, such as the decision of constitutional questions, and the acquisition on the bench, of a perfect knowledge of local law, the number will certainly be a positive advantage. For others, possibly an objection; but we are consoled with the reflection, that we have safe precedents, entitled to great weight, that should serve to allay our apprehension.

In England, whose judicial system and jurisprudence is supposed by many to be the best in the world, the twelve judges have, for time out of mind, met in the Exchequer Chamber for the decision of cases and questions of law; and their number has never, to my knowledge, been complained of as an inconvenience. In Scotland, whose judicial character also stands high, the Court of Dernier Resort is composed of fifteen judges. England allows appeals and writs of error to the House of Lords; and to come nearer home, my own State has for its court of final resort, the Senate of the State, composed of thirty-two members, its President, the Chancellor and Judges of the Supreme Court. It might not do so well for me to speak of the character of the administration of justice in that State under its old and present system, which, in this respect, are alike; others will judge of that—our light has not been hid; but this much I will say, that our citizens are now well satisfied with it, and that in a convention held a few years since, no attempt was even made to change that feature of the system—the Court of Errors as it now exists, and has from the foundation of the Government. I have, therefore, made myself easy upon this point. I believe the bill will not only do well, but will do all that is desired from it, and I sincerely hope it may pass.

Mr. RUEGLES, of Ohio, followed, in opposition to the amendment, and in favor of the bill, as it came from the other House; and it was opposed also by Mr. HARRISON.

The amendment was supported by Messrs. ROWAN, NOBLE, KANE, and BENTON, each at considerable length, and Mr. RANDOLPH also advocated the amendment, and addressed the Senate in a speech of more than two hours' duration.

The question was then taken on agreeing to the amendment, and carried by the following vote:

YEAS.—Messrs. Barton, Benton, Berrien, Boughn, Branch, Chandler, Chase, Clayton, Cobb, Dickerson, Eaton, Edwards, Findlay, Hayne, Hendricks, Holmes, Kane, King, Macon, Marks, Noble, Randolph, Robbins, Rowan, Smith, Tasewell, Thomas, Van Buren, White, Willey, Williams, Woodbury—32.

NAYS.—Messrs. Harrison, Johnson of Kentucky, Ruggles, Sanford—4.

Mr. ROWAN then moved further to amend the bill, by adding thereto the following sections:

"4. *And be it further enacted*, That the Supreme Court shall, in no instance, decide that the Constitution of any State, or any provision thereof, or the

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law of any State, or any law of Congress, or any part or portion thereof, or of either or any of them, is invalid or void, by reason of any supposed collision between them, or any part or portion of them, or any or either of them, and the Constitution of the United States, or any article, section, or clause thereof, unless at least seven of the justices of said court shall concur in that decision—in which case it shall be the duty of the justices who shall concur therein, to make out each his opinion in writing, separately, and deliver it to the Clerk, whose duty it shall be to spread the same upon the record of the court.

"5. *And be it further enacted*, That, hereafter, until it shall be otherwise provided by law, such kind of process only shall be issued, and in such order only, upon the judgments or decrees of any of the courts of the United States, as are authorized and permitted by the laws of the State wherein such judgment or decree shall be pronounced, to be issued upon the judgments or decrees of the highest judicial tribunals of that State; and the marshal, or other ministerial officer of such court of the United States, shall be governed by, and conform to, the laws of the said State, in his execution of the said process, as well in relation to the property or person subject thereto, as to his proceeding therewith: *Provided*, That nothing in this section shall be construed to extend or apply to any judgment or decree pronounced by any of the said courts, in cases affecting the public revenue, or to the process which may issue thereon, or the management and execution thereof, by the ministerial officers of the said courts."

The amendment was ordered to be printed; and then

The Senate adjourned to Monday.

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The Senate resumed the consideration of the bill further to amend the Judicial System of the United States: the amendment proposed by Mr. ROWAN, on Friday last, pending.

Mr. ROWAN rose and addressed the Senate as follows:

Mr. President: The two sections which I had the honor to offer as an amendment to the bill now under consideration, contain, each, a distinct proposition. Both, as I conceive, of very great importance, in their import, to the people of the States of this Union. By the first, it is proposed that seven of the ten Justices of the Supreme Court, shall concur in any judgment or decree, which denies the validity, or restrains the operation, of the constitution, or any law of any of the States, or any provision or enactment in either. By the other, it is proposed that the ministerial officers of the Federal Courts shall be governed, in levying, and carrying into effect, the executions which issue from those courts, by the Execution Laws of the States respectively, in which those courts shall respectively be holden.

Every amendment, Mr. President, implies a defect in the subject proposed to be amended. Every remedy presupposes the existence of an

evil. It therefore behooves him who proposes the remedy, not only to point out the evil, but to show the fitness and competency of the remedy. I solicit your indulgent attention, and that of the Senate, while I attempt to point out some of the evils which are expected to be alleviated, at least, if not remedied, by the amendments which I have proposed.

And first, of the evils on which it is hoped the first section will have a remedial effect. They are those which result from the exercise of implied powers by the Judges of the Supreme Court. From an enlargement of the powers of the General Government, by inference and construction, through their instrumentality.

To distinguish between the powers which may be legitimately exercised by that tribunal, as the organ of the General Government, and those which they have derived, and are in the habit of deriving, by implication, a short inquiry into the nature, origin, and *extent*, of the powers which justly belong to the Government of the Union, may not be inappropriate. I promise you, sir, not to be tedious: I will just premise, that a little attention to the import of some of the terms, which are necessarily employed in political discussion, and which I shall be constrained to use, may save from some confusion, in the progress of this inquiry, and enable us to comprehend more clearly the subject embraced by it.

I feel that it is necessary: because the terms to which I allude have, in the discussions of much abler persons than myself, for the want of this precaution, run into each other, and somewhat obscured their arguments. There is nothing more common than to call a Government a State, and, *e converso*, a State a Government; and the General Government is almost universally called the National Government, the Government of the Nation, &c. The indiscriminate use of these terms tends to confuse the ideas which they import; and their import, thus indiscriminately applied to the *States*, the State Governments, and the General Government, tends to confound distinctions of the utmost importance to the people of the States.

State is a word of technical import in the nomenclature of politics. I understand it to mean civil society, as incorporated by the social compact; and by social compact, I do not mean, as many do, the constitution of a State—no two words differ more in their import. The social compact, I understand to be that contract by which men pass from a state of nature, to a state of civil society; that contract in which each agrees with all, and all with each—that each will surrender to all the control of himself, his powers, and his property, and that all shall protect each, in his person, property, and possessions. Anterior to the formation of this compact, every man was, *sui juris*, in the fullest meaning of those words—exempt from the control of others, and without the right to



control anybody; he was subject only to the control of his own will; every man was independent of every other man. By this compact, civil society was not only formed, but incorporated, became a body politic, a moral agent, a *State*. The *State* thus formed, by the consent of all its members, expresses its will, by the voice of a majority, which will is, by the compact, to be the rule of their conduct, the law of their rights, the arbiter of their disputes.

Civil society, thus formed by the social compact, is denominated a *State*. The will of the people who compose that society, is the sovereign power of the *State*. But how that power shall be exercised, most beneficially for the people, is the question presented to the *State*, immediately after its formation. It has to settle upon the plan, by which its will shall be exerted in regulating the conduct, defining the duties, and protecting the rights, of its members. This plan of government is ordained by the *State*, in its constitution: so that, instead of the constitution being the social compact which *forms* the *State*, the *State forms* the constitution; which is but a diagram of the manner in which the will of the people is to be exercised in governing; that is, managing the concerns of the *State*, by the functionaries to be employed for that purpose. Those functionaries are legislative, judicial, and executive, according to the constitutions of the *States* of this Union, and constitute what I call, and what I think can only be properly called, the *Governments* of the *States*, or *State Governments*.

The *State*, by the constitution, confers on those functionaries the *authority* to exercise the governing power. The *power* which is exercised in governing, is neither created, nor specifically conferred, by the constitution. The authority, *only*, to exercise that power, is specifically conferred by that instrument.

The constitution and laws of the *State* are formed by the will of the majority. In the formation of the *State*, unanimity was required. To the formation of the constitution, and the enactment of laws, the will of the majority is competent. The competency of the majority, to the formation of the *Government*, was derived from the unanimity which had existed in the formation of the *State*—in its formation, all assented that the majority should be competent to the formation and administration of the *Government*. The *State* derives its existence, and its power to *govern*, from the social compact, and forms its plan of exercising that power, by its constitution, which is properly called its *Government*. So that the *State* is as distinct from its *Government*, as the Creator is from his creature. The former can alter, amend, or abolish, the latter, at pleasure. It still exists, whatever may be the mutations of its government, upon the firm, unaltered, and inextinguishable basis of the social compact. It is upon this principle that the debt of a *State*, or Nation, cannot be cancelled by any revolution whatever

in its Government. The debt was not due from the Government, but from the people, in their corporate *State* capacity; and nothing but their extinction could extinguish the debt. If we define liberty to be the right of the citizens to do, each, what he ought to *will* to do, and not to be constrained to do what he ought not to *will* to do, the social compact furnishes, in the *will* of the majority, the *rule* of that right, and the *power*—the *moral force*, which guarantees its enjoyment. And this is the sense, Mr. President, in which *liberty* is *power*: it is the *power* created by the *social compact*—which constitutes the *liberty* of the citizens. The controlling power of the will of the majority, is not only the power, but the essence of liberty. The control of this will, by the functionaries of the Government, whether Executive or Judicial, is any thing but the *power* of *liberty*. Liberty is power, when the people of the *State* govern themselves, by their *own will*, according to *their own* plan of government; by functionaries of *their own* appointment. Thus it is evident that the *States* were, anterior to the formation of this Union, independent Sovereigns—aliens in their *nature*, as all sovereigns are, to each other. That each had an organized government—its constitution; that the *people*, and their *property*, belonged exclusively to the *States* of which they were citizens.

Now the question is, by whom was the Government of the United States formed? By the *people*, by the *States*, or by the *State Governments*? Does it emanate from the *States* in reference to the social compacts by which they were created? Or in reference to the constitutions which they formed? Or from the people of all the *States*, without regard or reference to either compacts or constitutions? This is a question of great import, as it relates to the extent and character of the powers of the General Government.

That the Constitution of the United States was not formed by the aggregate people, absolved from the social compacts, whereby they had incorporated themselves into *States*, we know—because, in that case, they must not only have dissolved those compacts, and thereby annihilated the *States*; but, after having done so, they must, as *one people*, have incorporated themselves by social compact, in order to get the power of forming the constitution by the voice of the *majority*. For, without this compact, the dissentients from the constitution could not, on any conceivable principle, be bound by it: for *assent* is the only rational basis of *obligation*.

Without this compact, either express or *tacit*, the control of the minority by the majority, would be tyranny. Besides, the existence of the *States* is not only recognized by the *constitution*, but many of its provisions are predicated upon their co-existence; and some of its machinery upon the co-existence of the *Governments* of the *States*. It was not formed then by the people in their naked character as such. It

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was not formed by the Governments of the States. It does not purport to have been formed by them: they had not been invested by the States with the powers requisite for that purpose; the State constitutions were not only not adapted, but opposed to its formation by the functionaries of the State Governments. How, then, was it formed? I answer that it was formed by the people of the States, in their corporate capacity—in that corporate capacity which is inseparable from civil society—which capacity can be conferred by the social compact alone, and which alone exalts the people of that society into citizens, and enables them to act as a moral agent—as a unit—as a State.

The Constitution, then, of the United States, was formed, not by the people, but by the people of the States, in their corporate State character. The people of each State, separately and distinctly, resting on the basis of the social compact, by which it was formed, and by the exercise of that sovereign power, which that compact created—by the exercise of which, it could *alone* participate in the formation of that instrument.

The power of the State is commensurate with the volume of the will of the people who compose it. The power of the *Government* is *less* than the power of the *State*, by the extent of the restrictions, imposed in its constitution and bill of rights upon its functionaries. They exercise the power of the State in the manner prescribed, and subject to restrictions, imposed upon their exercise of it in that instrument.

If, then, the Constitution of the United States was formed by the people of the States, and the people acted in their corporate State capacity, in its formation, it must be a Federal, and cannot be a National Government, and the powers of which it consists must necessarily be specific. For if, as I have asserted, (and I do not repent of the assertion,) the governing power is a moral force, and consists exclusively in the will of the people, and the people belong to the States, then there is no source whence this power can be derived to the General Government, by implication or inference. The power of the General Government consists exclusively in its constitution. It is a *mere government*, consisting of designated functionaries, permitted to exercise *specified powers*. It does not consist of the people, and, therefore, cannot legitimately use their will, except as concocted by the States.

It is, Mr. President, I believe, a just dictate of reason, that the zeal to guard against an evil, should be in proportion to its magnitude. What is the magnitude of the evil apprehended from the exercise, by the judges, of *implied powers*; and what are the reasons for apprehending it? The evil apprehended is the absorption of the powers of the States by the General Government, through the instrumentality of its judges: the reasons for this apprehension are to be found in what they have already done. It is fair, Mr. President, to

judge of the future from the past; the *past* is, in fact, the only medium through which we can look into the *future*; the *present* will not stay with us long enough to be examined; it is the only portion of time which always seems to be in a *hurry*. We see, in the humiliation of a majority of the States, the triumphant encroachments which the General Government has made, by judicial construction, upon State rights. It is impossible, Mr. President, to depict either the extent or the magnitude of the evils inflicted upon the States, by the judges, in the exercise of implied powers. I have attempted to show, *not* that *liberty* is *power*, but that *power* is *liberty*; if I am correct in the position that liberty consists in the right of every citizen to do whatever he ought to will to do, and that the guarantee of that right is in the *power* of the *State*, then any diminution of the power of the State is a correspondent abridgment of the liberty of the citizen; and, consequently, the prostration of the power of the State is the vassalage of its citizens. The magnitude of the evil, then, in its extreme, is neither more nor less than the loss of their liberty by the citizens. But if we define liberty to be the right of every citizen to do what the laws *permit* him to do, and the power of the State to consist in the will of its citizens, then the code of the State, regulating the conduct of its people, is but the will of the citizens, regulating their own conduct. Hence, the liberty of the people of each State consists in the power of self-government: and the abstraction of that power is the destruction of liberty. The denial to a State of the power to make laws, in relation to the social intercourse, conduct, or interests, of its own citizens, is, in so far, a paralysis of the power in which their liberty essentially consists. This paralysis has been inflicted by the judges upon a majority of the States which compose this Union. They have been successively stripped, by that tribunal, of their sovereign power, to an enfeebling and degrading extent. These instances are *past*; they cannot be recalled. The mortification they inflicted can only be compensated by the lessons of caution which they inculcate—the admonitions which they give to the States, to guard against their recurrence. To maintain the power of a State is to maintain the efficacy of its laws: for its power consists in the enactment and enforcement of such laws as its condition may require, conformably to its constitution. The importance of the free and unhampered exercise of this power to the freedom and happiness of the people, must be obvious to the most superficial observer.

This power, Mr. President, consists, as I have already perhaps too often repeated, in the will of the people. This will, to be beneficially and efficiently exercised, must, from its nature, and the nature of man, be exerted within a limited sphere. To be efficient, it must be confluent; to be beneficial, it must be harmonious. But

there is a territorial extent, beyond which the people cannot mingle sympathy and sentiment—beyond which, that confluence and compaction of the people's will, which is necessary to their liberty and their comfort, is impracticable—beyond which, if its confluence were even practicable, its harmonious *interfluence* is denied by physical, and, of course, invincible causes. The climate and the soil, occupied by any people, have a powerful influence upon the complexion of their will. The same climate, and the same kind of soil, produce substantially the same kind of pursuits, the same customs, habits, and manners; and, of course, the same complexion of will. If they occupy the seaboard, they are commercial, as well as agricultural, (unless the soil forbids agriculture,) and those pursuits accommodate themselves to each other by the kindest reciprocation of their respective facilities. If they occupy the bosom of a continent, their pursuits are less diversified, and their habits and manners more simple; because, the climate has been uninterrupted in the concoction of their will, by the interference of the ocean. But, whether in the bosom of a continent, or on the margin of the ocean, they can only be free to the extent in which they can exert their mingled will, in the *exclusive* management of their own interior concerns. Upon this theory, Mr. President, the States of this Union should be maintained, with their powers undiminished from any quarter. The States are happily suited, in their territorial dimensions, to the practicable exertion of the confluent will of the people who compose them, in the enactment of laws for the regulation of their own concerns, suited not only in their dimensions to *compaction* of will, but to those physical causes which, by producing *sameness*, give strength to that compaction.

Is this theory illusive? Is it not verified by the history of civil societies, in all ages, and in all countries? What instance, Mr. President, does history furnish, of a free Government covering a great extent of territory? Has freedom ever been the entire occupant of a continent, or of a great portion of a continent? No, sir; entire continents are the property of despots; and, of course, the abodes of slavery and wretchedness; and that, not because the people are less fond of freedom than the people within more circumscribed limits: for the love of liberty is natural to man—but because of the impracticability, resulting from territorial extent, combined with physical causes, of producing and maintaining in a lively and active condition, that concert, that compaction of will, in which alone consists the power which is liberty; in which alone consists the liberty which is power. For, I repeat that *liberty is power* in that sense only in which power is liberty.

The Government of a continent must be, of physical necessity, a despotism. It cannot be even a monarchy. And why? Simply because the will of the people cannot circulate in volume, actively and wholesomely; that is, in

compact confluence throughout the mass. It cannot be confided in, farther than its effects can be seen and felt. They cannot be seen and felt throughout. Its circulation becomes languid; stagnancy succeeds to languor, apathy to both. Sensation usurps the place of intellection, and fear succeeds to the place of volition, and becomes the principle and the power of the Government. The people cease to govern themselves by the power of their own will, and permit the despot to govern them by the power of their own fears. He keeps up their fears; and exacts their obedience by employing, coercively, the physical force of the extremes against each other. He keeps every portion in awe by the force of the whole, and the whole by the force of every portion.

Such, Mr. President, must be the condition of the people in these States, when, through the instrumentality of the Federal Judiciary, or any other means, the States shall have been destroyed, or reduced to consolidation. Their condition will be even worse: for the machinery of the State Governments, which were formed by the will of the people, to suit their wants, will be employed as the coverts and conduits of oppression. Those corporate devices, by which the refreshing streams of public will were conducted to the vine and the fig-tree, under the comfortable shade of which every citizen sat, when there was none in all the land to make him afraid, will be organs through which official tyranny and misrule will inflict fear and misery upon the once happy abodes of peace, security, and comfort; and for this there is no remedy, while the dominion of the despot retains its territorial extent. The only remedy is, in cutting the continent up into Governments, no one of which will be too large for the energetic circulation of the governing will of the people. In that way, they may establish and maintain their freedom, until they are *construed* by their *functionaries* out of their right to govern themselves.

Mr. President: there is not any thing beneath the sun but mind and matter: one or the other of those two substances must govern. Matter cannot; mind, of course, must. And the question must always be, whether the will of *all*, of a *few*, or of *one*, shall govern. The people can only govern by their *united* will, when they are so situated as to be able to *unite* their will for that purpose. When that is the case, their happiness is in their own power; for the power of the united will of the people of a State is almost indefinite. In England, when the will of the people has, through the Representative principle, been employed as the governing force, it has, though encumbered with rotten boroughs and with royalty, achieved wonders. It has secured to the people as much happiness and liberty as were compatible with their condition and form of government.

In Rome, in Greece, and wherever else the people have been free, they have been happy and powerful while their freedom continued. But,

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in those places, and wherever else, in all time past, freedom has been found, it has been found in the possession of a people occupying a comparatively small territory.

While, therefore, the States can maintain the free and unfettered exercise of their own will, in the management of their own interior concerns—while the Federal Government will be content to exercise the powers conceded to it by the States, in the Constitution of the United States, and leave to the States, respectively, the exercise of their will as sovereigns in the regulation of their internal polity, the people of the States will be free and happy; and the States will be strong in the vindication of the rights of the Union, in proportion to the freedom and happiness of their citizens. Their strength, upon an emergency, will be the strength of giants refreshed by sleep.

And, Mr. President, permit me to ask if it is not more in accordance with the nature of our complex Government, that the Union should depend upon the States for its vigor, than that the States should look to the Union for their strength. Does not the theory of our Government enjoin that we should look rather to the good of the whole, by taking special care of the parts, than that we should look to the good of the parts, by taking special care of the whole? Can we hesitate upon this question, when we consider that the liberty and prosperity of every citizen is in the exclusive keeping of his State, and not of the Union? That the citizens owe their happiness to their respective States, and derive their liberty from them? That it is in the States that patriotism, to whatever extent it may exist, must be found? It is in the States, and under their protection alone, that the family altars are reared, and the family firesides consecrated by family endearments; and that it is under the protecting toleration of the States that temples are erected to the living God, and public and social devotion conducted. The Federal Government does not possess, in any of the States, nor has it the capacity to procure, the ground on which to erect a temple, unless as lessee of the United States Bank. It has no country. It has, I repeat it again, no people, no citizens. Let it, then, look to the States for its wealth, its strength, its prosperity. They are the true and only source of them all. It is a mistake, to suppose that the wealth of a State consists in the richness, in the redundancy of its exchequer. It is rich only in proportion as the money of the country is in the pockets of its citizens. It is impoverished by every dollar unnecessarily taken from their pockets. Its true wealth consists in the wealth of its citizens—in their industry and enterprise. Its strength, in their freedom. No State can be strong, or even wealthy, whose citizens are not free. No State can be weak, or poor, whose citizens enjoy liberty. Take notice, Mr. President, that I am speaking of States, or nations, and their citizens. The Federal Government is neither a State, nor a nation; nor has it citizens. It is a Govern-

ment, merely: rich, in the true political sense of that word, only in the wealth of the States; strong, only in their strength. It is to guard the General Government from enfeeblement, by encroachments upon the powers and rights of the States, that I made you the propositions, the first of which I am now, feebly, I fear, attempting to support.

There is no lodgment of power, in the making of which there has been so much difficulty experienced by the statesmen of all countries, as that of the Judiciary. There is none which has been exercised, by those who were invested with it, more oppressively to the people, and with more obliquity by the fiduciaries. The history of Rome and of England abound in instances of judicial malversation, bribery, and corruption.

At Rome, as we learn from the oration of Cicero against Verres, the bribery of the judges was matter of course; and that those who were wealthy enough to do it, spoke of it with the same indifference with which they spoke of the common and ordinary dispositions of their money. From the history of that country, we learn, that the moment a man became an informer, he was put under guard, lest he should *bribe* the judges or the witnesses.

In England, the reigns of Edward the 1st, Richard the 2d, Henry the 8th, James the 1st, Charles the 1st, and Charles the 2d, were marked by judicial tyranny, obliquity, and corruption. Sir Ralph de Hengham, Chief Justice of the King's Bench; Sir Thomas Wayland, Chief Justice of the Common Bench; and Sir Adam de Shallon, Chief Baron of the Exchequer, were convicted and punished, and that heavily too, for their corrupt exactions in the administration of justice. The Earl of Suffolk; M. D. la Pole, Lord Chancellor of the kingdom; the Duke of Ireland; and the Archbishop of York, were declared guilty of high treason; and a number of judges, who, in their *judicial capacity*, had acted as their instruments, were involved in their condemnation: among whom were Sir Robert Belknap and Sir Robert Treselean, the latter Chief Justice of King's Bench. The crime of those I have last named, consisted in their attempt to subvert the liberty of the people; some of them were hung, and the rest were banished. To these may be added the names of Sir Thomas Empson and Edmund Dudley, guilty of exactions; Lord Bacon, of corruption; nor ought the names of Chancellor Finch, Keeper of the Great Seal; Judges Davenport, Crowley, and Berkly, who were guilty of attempts upon the liberty of the people, to be pretermitted.

Sir William Scroggs, Lord Chief Justice of King's Bench; Sir Francis North, Chief Justice of the Common Bench; Sir Thomas Jones, one of the judges of King's Bench; and Sir Richard Weston, one of the Barons of the Exchequer, were all impeached by the Commons of England for partialities in the administration of justice. These instances show, that no influence nor dignity could secure the judges, either from corrupt

practices, or from the vigilance of the representatives of the people of England. Other instances, Mr. President, might be adduced, from the English history, of judicial corruption; but these will suffice to prove, what, in fact, needs no proof, namely, that judges are but men; that the ermine furnishes no security against the force of temptation, or the frailties of human nature; that they are as liable to err, as any other description of public functionaries; and from some unhappy fatality, are, in the organization of almost every Government, made more irresponsible: while, from the comparative paucity of their numbers, and the nature of their powers and duties, they are greatly more exposed to temptation than their co-ordinate fiduciaries.

Happily, the Judges of the Supreme Court of the United States—I mean the present incumbents—are men upon whose integrity suspicion has never scowled. They have suffered only—if they have suffered at all, in the discussion of this bill—from a profusion of injudicious eulogy in the House of Representatives. The ermine should never be tarnished with the spatterings of fulsome adulation. There is a sanctity about the judicial, like that about the matron character, which ought not to be profaned, even by well-meant declamatory praise. The matron should be content with the affectionate confidence of her husband, the judges with the approving confidence of the people. Oclamorous praise is injurious to the character of either: neither, if they do their duty, need it; and, with the intelligent, it is apt to be suspected to be but a fig-leaf expedient, kindly got up to conceal violated duty. The absence of murmurs and discontent is the most substantial commendation of both.

I feel emboldened, Mr. President, by the unsuspected integrity of the judges, to speak the more freely of their encroachments upon the rights and powers of the States, by decisions merely erroneous. For, if irreparable injury may be done to the liberty of the people by mere error of judicial opinion, what may not be apprehended from judicial corruption? And, what right, Mr. President, have the people of these States to hope for a greater exemption from judicial obliquity and corruption, than the people of Rome or of England? The present incumbents are not immortal; they cannot remain upon the bench forever. I have shown you, by reference to the history of England, that judges in that country, loaded with wealth, encumbered with honors, and distinguished for their intellectual attainments, were convicted, some of them for corruption in office, and others for what was worse, if possible—combining with the ambitious and unprincipled to destroy the liberty of the people. I urge, Mr. President, not that our judges are bad men, (for I believe them to be good men,) but that we may have bad judges; but whether we shall or not, that it is wise to guard against those errors and indiscretions to which, as men, they must be subject. What has been, may be again. There not only have been bad judges, but the world has been

infested with them. The country whose history I have just quoted, was harassed by them for centuries, and would have continued to be so, had she not learned wisdom from experience, and converted her punitive into cautionary vigilance; and, instead of hanging and banishing her judges, placed them in a posture of dependence upon, and responsibility to, the will of the people. This was done by an act of parliament, in the thirteenth year of William 8d, which fixed the salaries of the judges, and provided that the king should remove them, upon the request of a bare majority of that body. By this act, the judges were brought within the reach of the representative principle, and thereby made accountable to the people, and dependent upon their will. Since that time, the judges of England have been pure, upright, and independent. Since that period, the people of that country have enjoyed, so far as related to their judges, what no other people ever enjoyed for the same length of time, namely, that tranquillity, peace of mind, and security of person and property, which constitutes the essence of human comfort, and which alone can be enjoyed under a just and impartial administration of the laws. Since that period, the judges, instead of lending themselves to the king, as the avenues and instruments whereby to oppress the people, have become, by being made dependent upon their will, and independent of the crown, the impregnable bulwark of the liberty of that country.

The English are the only people in the Old World who have found out the *great secret* wherein judicial independence consists. It was a precious discovery. They knew its worth, and availed themselves of it, by the provisions of the act to which I have just alluded. Before that time, the king appointed and paid the judges. They were his judges—so called. The king's judges—of course his creatures. By that act they became the *People's judges*; dependent upon the will of the people for their salaries, and the tenure of their offices. Before that time, they were dependent upon the will of the king for both; they were commissioned by him during his pleasure. By that act, it was provided that they should be commissioned during good behavior; that is, during the pleasure of the people, instead of the pleasure of the king. Before that time, the nation was repeatedly agitated, and sometimes almost convulsed, by the efforts of the people to get rid of corrupt, oppressive, and tyrannical judges. They had no mode of doing it, but by banishment and hanging.

There the judges had the protection of the king, whose pliant instruments they frequently were. Since they have been made dependent upon the people, and responsible to them, there has been no attempt to remove any of them; no agitations; no convulsions. And why, Mr. President? Because, knowing that they could be deprived of their salaries and offices by the people, whenever they should please to exercise that power, they have administered impartial

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and even-handed justice; and the people are not so capricious as the advocates for judicial infallibility are in the habit of representing them to be. For a people who govern themselves, to require their judges to be independent of their will, or even to permit it, is to surrender their liberty.

The judges of the United States, then, Mr. President, are, unhappily for the States, more independent of the people than were even the judges of England, while they belonged to the king. There the *punitory* power of the people, when they were agonized by judicial iniquities, and only then, could reach the judges. Here they cannot be reached effectually by either the *punitory* or restraining power of the people. There is, Mr. President, a peculiarity in the Government of the United States; it has all the energy, and aims at all the grandeur and magnificence of a National Government, without being really so. It is a great corporation, removed from the people by the intervention of other corporate structures. The State Governments are between it and the people. The judicial functionaries of the General Government, removed, as they are, from the people, by the intervention of the machinery and functionaries of the State Governments, and created, as they are, without any *immediate* agency, on the part of the people, cannot be expected to regard the people of the States with any very peculiar sensibility, or to be regarded by them with the vigilance necessary to the preservation of their rights. The attention of the people must be engaged in superintending the agency, and in restraining the official vagrancy, of their own immediate State functionaries. And when was it, that any people were known to be able to preserve their liberties from the encroachment of those to whom they had confided the administration of their Government? The powers delegated by the people to their official agents, for the purposes of one Government, have always been perverted to the destruction of their liberty, in despite of all the vigilance they could use. How then can it be expected, that they can guard their liberties against the encroachments of two sets of functionaries; between one of which, and themselves, there is no intimacy of relation; indeed, no relation, but that which consists in the exercise of power, on the one side, and submission on the other; power on the side of the judges, and submission on the side of the people.

The judges of the General Government are subject to no legal responsibility; and they cannot be under the influence of moral responsibility. They are the judges of a *Government* that has no people, no citizens. There is, between them and the people, the State Governments, and the State functionaries. They are not on the level of human agency, and human sympathy. They visit that level clad in the panoply of power. Their contact with the people is marked by authority; is marked only by the display of power on the one side, and submission on the

other. For, although the General Government and its functionaries are the property of the people of the States, yet, emboldened by their irresponsibility; secure in their *salaries*, and their offices; conscious that neither can be affected by the people, or Governments of the States, they treat both *as their property*; they can, therefore, be under no moral responsibility—there is no medium through which it can act upon them. They occupy an exalted corporate theatre; they are seated upon an *eminence* of power, which, though erected by the people of the States, cannot be affected by them. To talk of the moral responsibility of judges placed by their installation beyond the reach of the will of the people, is to betray a want of knowledge of human nature; the *manners*, the customs, habits, and moral sentiments, of the people, cannot be expected to control those judges, who are not only not controlled by, but have the absolute control of, the people.

Mr. President: The present incumbents are above all suspicion; obliquity of motive has never been ascribed to any of them; their successors may not possess, or deserve, public confidence to the same extent. But, let it be remembered, that the judges against whom injurious imputations were not made, even when the fervor of party politics was at its highest, sustained and enforced the *alien* and *sedition laws*. American citizens were fined heavily, and imprisoned too, under the sedition law: such was the *prone*ness of those judges to swell the power of the Government whose functionaries they were. Although the liberty of speech, and of the press, were guaranteed by the constitution to all the citizens of the States; yet *they* fined and imprisoned several of our citizens for exercising that liberty. That law, which struck at the *very root* of liberty, was gravely decided to be constitutional by the judges of the Federal Government, while laws, enacted by the States, in relation to the soil within their limits; laws, enacted to give repose to occupancy, by limiting the period within which suits should be brought for the protection of the honest occupants, have as gravely been decided by them to be unconstitutional and void. But what power is it, which any of the States has exercised, which tended at all to assert its sovereignty, and vindicate the rights, real or personal, of its citizens, which those judges have not either disparaged or vacated by their decisions?

And, Mr. President, what law of Congress has been enacted which tended to trench upon the rights of the States, or of the citizens of the States, which that court has not affirmed to be constitutional and valid? The Congress, in an *evil hour*, enacted a law, creating a Bank, with a capital of \$35,000,000, with power to plant offices of discount or deposit in any, and all, of the States, without their consent. The power to enact this law was not given to Congress in the constitution—I have, I trust, shown, that the powers of the General Government exist in

grant; that they are, and must necessarily be, express, and cannot be implied; that the people of a State, or nation, may, through the agency of their functionaries, create a corporation; but that the corporation, when created, must be content with the powers granted; that its powers, necessarily, consist in grant, and that it cannot create another corporation—and that too, with powers not conceded to itself.

There is, Mr. President, in this matter, something which has hitherto escaped scrutiny; and escaped, because of the sanctity of the region in which it lies concealed. It seems never to have occurred to anybody, that the judges might as readily be supposed to enlarge the Constitution of the United States by construction, as the States to violate it by legislation. There has been, and is at this moment, in this country, a judicial idolatry—a judicial superstition—which encircles the judges with infallibility. To have them independent, public sentiment has, as I have before stated, accorded to them absolute power. That concession implies infallibility. Upon the supposition that they cannot err, their imputations upon the States have passed for oracular. The States have been disparaged; and the legislation of the States, the living fountain of the liberty of the people, has been degraded. Mr. President, if the object had been to destroy the liberty of the people of the States, and human ingenuity had been tortured to devise a plan, more effectual for that purpose, than any other, the one which is now, and for some time past has been, in operation, is the one which, in my opinion, would have been adopted as the most effectual. What is it? To disparage, by every possible means, the State powers, and especially the legislation of the States: disgust the people with the only organ by which they can express their *will*—with the legislative department of the States. And by what means? None more effectual than for the judges of the Federal Government to vacate the State laws by solemn decisions; with apparent reluctance, but with great gravity, impute perjury by implication to the one hundred and fifty select and selected men who enacted them—perjury, not by design, but by negligence, or ignorance; not by saying that they were either knaves or fools, but by leaving it to be inferred that they were either the one or the other. Nobody will have the hardihood to believe that the imputation of either, could attach to the *ermine*. What next? Why, impress the public mind with the belief that, however *fit* the States may be for the regulation and decision of little matters of *meum* and *tuum*, between their own citizens, they are utterly incompetent to decide upon any matter, in which so important a personage as the Bank of the United States is concerned; that the dignity of the origin of that institution, the weight of its character, and the extent and nature of its resources, entitle all its concerns to a place on the federal docket. Let the judges rivet this impression upon the pub-

lic mind, by a solemn decision that the bank has the privilege to sue, and be sued, in the Federal Courts alone: in addition to this, let the presses, which are under the control of the General Government, and of its bank, vilify the States, as petty, partial, and turbulent corporations; and portray, in glowing colors, the excellence and grandeur of the General Government; let them linger, at the close, with fond delight, upon the *independence* and *intellectual pre-eminence* of its judicial functionaries: again—let the President recommend it to Congress to cut the States up into roads and canals; and let the Congress take the hint, and commence operations: does any thing remain, Mr. President, to complete the prostration of the States, and with them the liberty of the people? Nothing, but what the bank can very easily effect; and that is, to constrain its debtors, immediate, proximate, and remote, who form a majority of the people of the States, to give to all these operations the unction of popularity. The bank, it is known, has able counsel retained in each of the States. Their efforts and influence must not be wanting to propagate the sentiments which, whatever they may be, are best calculated to swell the tide of its influence; the bank is their client; it is in the way of their vocation. Add to all these the usurers, brokers, stock-jobbers, merchants, and manufacturers, and who can doubt the result? I am one of those, Mr. President, who *do not believe* that the States are incompetent to the management of their own affairs; that they are, in their legislation, regardless of the Constitution of the United States; that they are petty, partial, turbulent corporations. On the contrary, I believe that their rights, and their constitution, and that of the United States, have been grossly and repeatedly violated by the Congress and Judiciary of the United States. I believe that the tendency of the General Government towards the absorption of the States, is visible, rapid, and, I fear, resistless. Yet, I would make the experiment to resist it. But, any experiment which purports to impose any restraint upon judicial discretion, is assailed by all our prejudices in favor of the sanctity of the *ermine*. The exclamation is, Do what you please with the States, but do not meddle with the Judiciary; you may tax and tariff the people, to swell the influence of the bank, by chaining to its car the manufacturers, whom you privilege by that process; you may make roads and cut canals, in any of the States, because you are thereby promoting the *general welfare*; and, because, then, you are only interfering with the constitutional rights of the States; in that, you are acting upon the people, and they, in all time, have been lawful game. But, touch not the *judges*; they are the great umpire between contending sovereigns; between the General Government and the States. The happiness of the people is in their holy keeping. The Judges of the Supreme Court the umpire! They looked up to by



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the States as umpire between the General Government and the people! They the most efficient organs of that Government which wants but people to have vassals—the just and impartial umpire between *States* contending to maintain the power of the people, and the *mere Government*, contending for the power of controlling the people; between the people of the States contending for the right of governing themselves, and the General Government, to govern them!

Strange infatuation! to suppose that *self-interest* is the just basis of impartial and disinterested umpirage. Let us, Mr. President, disenchant ourselves from our fatal delusions, in relation to this Judiciary. Let us invoke our reason to disenchant our feelings, and relieve us from this blind devotion to the judges, this self-destroying idolatry. Let us not forget that they are men—and suppose it possible for them to err. I ascribe to the present incumbents nothing worse than the faculty of erring; and, if they may err—if their successors may, possibly, do worse than err—is it not wise to guard, as far as practicable, against that occurrence? Is not prevention more wise than remedy? But why speak of remedy? Their errors are irremediable; and, therefore, there is the strongest reason for every practicable prevention.

Mr. President, when the Senators sit in their judicial capacity, to try a judge of that court, the concurrence of two-thirds of that body is necessary to the conviction of a single judge; why should it require two-thirds of the Senators, in their judicial capacity, to convict *one* of those judges of a misdemeanor, while a *minority* of the very same judges may convict a *State* of having violated the constitution? There are now seven judges; four of whom constitute a quorum; *three* of the *four*, a *minority* of the whole, *may*, and in some instances *have*, pronounced State laws, of the most interesting character, *void*. Thus you see, Mr. President, three of the seven judges can vacate the laws of the twenty-four States successively; can *disrobe* them of their sovereign legislative power; while it takes the concurrence of *sixteen States*, or *thirty-two* Senators, sitting as judges, upon a *single one* of those judges, to convict him of *unconstitutionality*, or in any way to affect his judicial faculty. Is this reasonable? is it prudent? is it politic? Can the States hope to retain their sovereignty; can the people of the States hope to retain their liberty, under circumstances like these? But is it not a perversion of terms to call that liberty, which depends upon the will of another? Are the States free, when their sovereign will may be controlled, and its efficacy denied, by the minority of a court, over which it has not any, even the slightest, control? Over whose decisions all the States can, in no possible way, either through Congress, or otherwise, exert any control? But, sir, not only can three judges, as things now stand, paralyze the sovereign

power of the States, but even *one* can do it. Yes, sir, a *single judge* can deprive a State of its sovereign power. As thus: suppose there are five judges upon the bench, the constitutionality of a State law is drawn in question; three of the five think the law unconstitutional; the other two are of a different opinion: how stands the matter, in relation to opinion? Why, the opinion of two on the one side neutralizes the opinion of the two on the other side; and were there *but four* on the bench, the law would remain valid and effective. But the opinion of the *fifth judge*, and his opinion *alone*, is against the law; and his opinion declares the law to be unconstitutional and void. And, Mr. President, under the bill on the table, if it shall pass into a law, without my amendment, the same thing may happen. Suppose there are seven judges on the bench, and six of them shall be divided, *three* against *three*, the *seventh alone*, makes the decision. If there are nine on the bench, and *eight* of them are divided, *four* against *four*, the *ninth judge alone* gives the opinion. For when the courts are divided into two against two, three against three, or four against four, the odd judge alone in each case pronounces the opinion; until he *speaks*, the law remains *valid*. The opposing opinions, possessing equal force, result in inefficacy; and when the odd judge declares the law to be unconstitutional, the judgment of the court, to that effect, is as exclusively his *sole opinion*, as if *he alone* constituted the court, and as effective, as if *all the judges* had concurred. Could a despot, Mr. President, do more than control the legislation of the States by his *fiat*? He could not do it with less than a hundred thousand bayonets. He could not do it with *even that force*. The people of the States would be prodigal of their *blood*, in vindication of their *rights*. And yet, strange to tell, these very people tamely, patiently, and even cheerfully, submit to lose those very rights, by the fiat of a judicial despot, which they would die to maintain against a despot, armed with whatever force—as if it could make any odds to them, after they had lost their liberty, whether it was taken from them by a judicial despot, *armed* with the moral force of their own fatal credulity, or by an ambitious aspirant, at the head of an *armed* force. Sir, a single judge may, in the same way, vacate a law of Congress. The two Houses of Congress may pass a law by a majority of two-thirds of each House, against the *veto* of the President. A single judge may, as in the instances I have mentioned, in relation to State laws, take side with the President, and overrule, by his *single opinion*, the two-thirds of both Houses of Congress. I mention this, Mr. President, to show that even the legislative power of the General Government may be controlled by that court—by even a single judge of that court. Not that I apprehend that the power of that court will be exerted in vacating the laws of Congress; I have really no such



apprehension. They are the judges of the General Government, and will always have the wisdom to prefer foreign conquests to domestic broils. My great object is to save the States from being degraded, to save the liberty of the States from being frittered away, by the judicial oligarchy of the United States. For, I insist upon it, Mr. President, that the Supreme Court of the United States, if it shall be indulged in the exercise of the powers which it has assumed, by inference and construction, in addition to those with which it is legitimately invested by the Constitution of the United States, is the most stupendous aristocracy which was ever tolerated in any country in which the sound of liberty was uttered, and its import understood.

But I will leave this section to the reflection of the Senate; my deficient manner of discussing it, will be supplied by their good sense. I must, however, beg their indulgence for a few minutes, while I offer to them the reasons which influenced me to propose the remaining amendatory section.

The execution laws, Mr. President, of any people, who assert their right to self-government, should, in a more emphatic sense than any other of their laws, be suited to their condition. Their other laws are, comparatively, theoretic and abstract. They exist in the statute book, for contemplation, as rules of conduct and of property; while unobstructed in the acquisition of property, and uninterrupted in its enjoyment, the people, unfortunately for the durability of their rights, pay but too little attention to the complexion of their *code*. Busied with the avocations of life, vexed with its cross purposes, and thwarted by its vicissitudes, they have but little leisure, and less inclination, for abstraction of any kind. But execution laws, Mr. President, address themselves to the senses of the people; an execution law, is *law*, in its practical, noun-substantive, *matter-of-fact* shape. The other laws constitute the rules by which each man regulates his *own conduct* and disposes of his *own property*. The execution law constitutes the *rule*, and creates the authority, by which *one man* takes and disposes of the property of *others*, by which *he* even deprives *others* of their personal liberty. I repeat, then, that the execution system of any State should be enacted with a wise regard to the condition of its people. It is a *despotic feature*, which cannot be *discussed* from the countenance of the Republic; it should, therefore, be softened as much as possible. The laws of right were enacted by the Legislator of the Universe, and written legibly and irreversibly in the volume of nature; the social compact recognizes that code, and legitimates it: its fitness and its force is, instinctively, recognized, felt, and acknowledged by the people. But, Mr. President, the laws of remedy are created by the State; they are the rules by which civil society exerts its remedial and protecting force, in favor of one or more of its citizens, against the delinquency

of others. They are the avenues through which that force finds its way to the delinquent citizens, and it should find its way in the gentlest of all the conceivable efficient modes. This is required by the peace, tranquillity, and harmony, of society. When the marshal seizes, and bears away with him, the property of an individual; if you abstract the authority under which he acts, his conduct amounts to robbery. The authority, therefore, under which he acts, should not only be visible, in his acts, but it should be obtrusively so; it should be a domestic, and not an alien authority; the individual who is the subject of it should perceive its justice from his consciousness that it was according to the will of the people of which he was himself a part, and in which he had confidence, because he had consented to it. He should, in fact, recognize his own power, as the agent, in producing his own privation.

Hence I insist, Mr. President, that it is the right of every State to enact the execution laws by which the judgment and decrees of the Federal Court, in that State, shall be carried into effect.

Mr. President, we are taught that the liberty and property of the citizens are regulated, guarded, protected, and guaranteed by the States. But how can they guarantee the liberty, or protect the property, of their citizens, if they permit their persons to be imprisoned, and their property to be taken from them, at the will of another Government, or at the instance of its functionaries? The citizens and their property must be regulated by the State; that is, by the people in their corporate capacity; or the State is not sovereign, and they are not free. The proprietary right of the States over the people, and their property, is, or is not, sovereign. If sovereign, it implies not only the right to regulate both according to *their will*, but competent wisdom for this purpose. If the power of the State is not sovereign, why are they mocked with it? If the General Government is the proprietor of the people, and their property; that is, if the citizens, and their property, are to be regulated by the Federal Government, why is not that power asserted by that Government? But I have, I trust, been successful in showing that the Constitution of the United States did not, and could not, confer this power; that it is inherent in the States, and that the States would be faithless to themselves, if they were to surrender it, or permit it to be usurped, or filched from them. It is not, it cannot be pretended, that the Congress could pass laws regulating conveyances, descents, and distributions, or last wills and testaments—laws regulating the purchase and transfer of property. But an execution law is, in fact, a law of this character; it involves, in its operation, the sale, purchase, and transfer, of property. And in States where land is, and shall continue to be, subject to sale under execution, that must, at no very distant day, (such is the vicissitude of human

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affairs,) become, in such States, the most prevailing title to lands. And, although Congress ought not, and, as I believe, cannot, legitimately, pass execution laws, except such as relate to its revenue; yet the Judges of the Supreme Court have construed themselves into the power of enacting laws of this character, under the denomination of *rules of court*. And some of, even the district judges, made *haste*, after this learned opinion was made out, by the Supreme Court, to exert their legislative power upon the States. In the State which I have, in part, the honor to represent, the legislative faculty of the district judge was very promptly and energetically exerted, in furnishing a system of execution laws *for the people*, or rather *against the people*; for it was, in all its outlines, and essential provisions, in utter contempt of their known and declared will. By the law of the State, imprisonment for debt had been abolished; by the law, alias rule, of the court, the *ca. ea.* was revived, and the citizens subjected to imprisonment for debt. By the law of the State, land could not be sold under execution, for less than three-fourths of its valuation; by the rule of the court it was enacted, that land should be sold, without valuation, for whatever it would bring, at a credit of three months; and, by several rules of the court, it was enacted that the marshal should convey the lands, sold by him under execution, to the purchaser. The rules, moreover, kindly prescribe the ceremonies necessary to be observed by the marshal, in making the conveyance, in order to give it validity.

Mr. President: it is time that it should be distinctly ascertained, whether execution laws should be enacted by the States, by the Congress, or by the courts. The object of the section which I am now attempting to discuss, is to silence all doubt on that subject, by rescuing that power from judicial usurpation, and leaving it with the States—its only appropriate source. And why should it not be exercised by the States? It originated with them. They have not conceded it to the General Government; they could not, consistently with the power they retained over the persons and property of their citizens, concede it to the General Government. The concession of it would have been an implied concession, to the General Government, of the power to regulate the conduct and the property of its citizens. It would, in fact, have been a virtual surrender, by the States, of all their sovereign power.

Mr. President, civil society is a unit; a moral agent; a sovereign, which prescribes by its will, and enforces the observance of its prescriptions by the power of its will. An execution law is but a display of the remedial energies of this will. This will is a stream that never ceases to flow, nor intermits its current; its current is, to be sure, sometimes more rapid than at others. In times of adversity it lingers, as it flows in a circuitous direction; in times of prosperity, it rushes forward in a right

line, but is always the same; always, and necessarily, from the nature of sovereign power, a unit. It is therefore, I ventured, with great deference, to differ from their honors in the construction of the process act of 1789. That act declared, in substance, that "executions should be levied and carried into effect according to the execution laws *now* in force in the several States." They interpreted the word "*now*" to mean the very point of time at which that act went into effect, and confined its effects to the modification of the execution law of each State, at that point of time; and made that interpretation the basis of the necessity which impelled them to enact the rules of court which I have mentioned. The word *now*, in that act, was, in my humble opinion, susceptible of a much broader import than they gave to it; the nature of the subject required that a broader import should be given to it; and words should always be construed in reference to the subject-matter to which they relate. "*Now* is the time, *now* is the day of salvation," is a text containing a repetition of that *adverb* of time; and who would construe those words to refer to the very point of time at which they were uttered? Who could restrict their import to a shorter period than the lifetime of those to whom they are addressed? To the lifetime of this world—the subject to which they relate?

Mr. President: By the Constitution of the United States, it is declared, that "the judicial power of the United States shall be vested in one Supreme Court, and such inferior courts as the Congress may, from time to time, ordain and establish." Pursuant to the direction of this clause, the Congress created, by the Judiciary act in 1789, the Supreme Court of the United States, by the creation of Circuit Courts—with the direction, that the judges of those courts should constitute the Supreme Court. By the bill on the table, six additional Circuit Courts, and three additional judges are *about to be created*. This bill should be enacted with great caution: for the bill, if it shall pass, will scarcely have gone through the forms necessary to give it the validity of an act, before it will be asserted that the very courts and judges which it creates, were created by the constitution. The constitution *now exists*; the six courts and three judges, intended to be created by that bill, do *not now exist*. They will have been created by this bill, and will exist, if it shall pass. And yet, it will no sooner have passed into a law, than it will be asserted that these six courts and three judges, which will have been created by the act, were created by the constitution. The whole corps will assert it. The Bank of the United States will back the assertion with all its influence—with its convincing metallic intelligence—and it will be in vain to urge that the power of Congress to create and destroy this court, was settled, by the deliberate sentiment of the people, in 1801; practically settled in the repeal of the *midnight*

Judiciary, of *memorable memory*. It will still be asserted, and re-asserted, that this court was created by the constitution; and, therefore, the necessity of exercising caution in its creation. Power delegated is never returned; and it is extremely difficult to reclaim it.

Mr. President: I am one of those who believe that the people do not belong to the judges; that the office of judge is created, by the people, for their convenience, and may be vacated by the same power that created it, when the public interest, or convenience, shall require it. The commission of the judge is but his letter of attorney, but the evidence of his authority to act as the agent of the people; which may be revoked, like all other power, at the pleasure of the principal. When you take the judge from the office, you must proceed by impeachment, and act by the constitutional majority upon *him*, upon the *man*. When you wish to take the office from the judge, you do it by the same process that you created it; you create the office, and confer the jurisdiction by law, and by law you can repeal them. This modern doctrine, that the tenure of his office by the judge, would be too precarious, if it depended upon the will of the people, strikes at the root of free government. You can have nothing in free government, more *stable* than the will of the people.

It is absurd to look to the will of the judge for stability in government. He is a tyrant, when he substitutes his own will for that of the people. It is in their will, and not in his, that the force of his judgments and decrees is to be found.

Away then, Mr. President, with all this delusive jargon, about the stability of the Judiciary, and the tumultuary and restless impatience of the people. The people are never impatient, but under unjust privation; it has been the misfortune of the world, that the people have always been too forbearing and patient. They never act, until oppression becomes intolerable, and then it is unhappily too late. They awake only to their wrongs, when their liberty is gone, and with it, the power of redressing their wrongs. They make an unavailing effort, perhaps a succession of efforts, to vindicate their rights; and the usurpers impudently impute to the struggles made to save their liberty, a restlessness of spirit, in the people, incompatible with its enjoyment. Sir, all experience proves the truth of what I say. Sir, why should the people surrender their freedom? Why should they surrender self-government? Nature made them free, gave them an organic fitness for its enjoyment, and in the power of *will*, the means of maintaining it. Freedom is the *natural state* of man—slavery is a forced state; the activity of freedom is charged upon the people, as the spirit of restlessness, of insubordination, and disorder. Sir, this is the cant of power, the lullaby by which liberty has been charmed into repose, and shorn of her strength while she slept. Are not the air we breathe, and the ocean which

we navigate, subject to agitations? and are not those agitations necessary to their purity and salubrity?

Repose may be found in a despotism or a dungeon, but never where freedom prevails. The atmosphere of freedom is like the natural atmosphere, tempestuous—it must be so to be healthy.

Mr. President: Believing, as I do, that the liberty of the people depends, essentially, upon the maintenance of the rights of the States, I have always regretted that the wise men who framed the Constitution of the United States authorized the Congress to invest the Federal Judiciary with the jurisdiction of cases between citizens of different States; between aliens and citizens; and between citizens of the same State, claiming lands under patents derived from different States. This provision imports an imputation against the States, of either imbecility, or partiality, which cannot be made against sovereign States: for neither weakness, wickedness, nor incompetency of any kind, can be predicated of a sovereign State.

This provision, therefore, impressed the stamp of degradation upon the States, at the very origin of the General Government, which the judges, by their repeated decisions vacating State laws, have heightened, and almost riveted, and yet the provision does not apply its imputation to the legislative department of the State Governments; the imputation applies exclusively to the judicial department. It was not, at the time that instrument was formed, so fashionable as it has since become, to vilify and disparage the legislation of the States.

The Judiciary, and not the Legislature, of the States, was *then* distrusted; *now* it is the Legislature, and not the Judiciary—neither ought, either *then* or *now*, to be distrusted by any, but the people of the States respectively. The supplement to the constitution, which created the Bank of the United States, and conferred upon it the right to sue and be sued, in the Federal courts, has (backed by the influence of that institution) had a most disparaging effect upon the States. They must be redeemed from this bad influence, if we are destined to prosper; the States must be left to manage their own affairs; they must be believed to be competent to that task—I say believed: for *public opinion* is the *saving* or *destroying* force of every people. But I have been tedious; I plead the importance of the subject as an apology.

Mr. HOLMES said he had been much edified by the able remarks of the gentleman from Kentucky; he agreed with him in his positions, he admitted the correctness of his conclusions, and yet he was obliged to vote against the amendment. It would be necessary in a few words to explain this seeming paradox. He should not attempt to follow the gentleman in his general remarks in regard to the origin of Government, inasmuch as he deemed them in some measure unnecessary. It was unprofitable

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for us to go back to inquire into the origin of our respective Governments. In tracing the pedigree of a family, Mr. H. said, it would sometimes happen that we come to some *illegitimate*; so it was in regard to Government. No Government in the world that ever has existed, or that does now exist, but had its existence by usurpation. That is, there is no Government in the world, and there never has been any, where the whole will of the people was brought to bear in the creation of that Government; and when that is the case, the rights of some are usurped. Our own Government, Mr. H. said, was emphatically a usurpation. The very constitution under which they were now acting, was in direct violation of a pre-existing Government, or compact. The Confederacy provided there should be no alteration in that system, without the consent of every State in the Union; and the Constitution of the United States provided, that when nine States out of the thirteen should agree to it, it should be a Constitutional Government; thereby excluding four out of thirteen, taking away their confederation, and instituting a new Government, without their consent, when there was an express provision in the Confederation that these articles should not be altered, unless every State consented.

With regard to the first amendment proposed by the gentleman from Kentucky, Mr. H. thought the doctrines it embraced were generally unquestionably correct. The gentleman had made some remarks on implied power. Power, Mr. H. said, was always progressive; it never retrograded. It always had been proceeding on, and always would be so, under every attempt to restrain it. This would be the case in every Government, and in none more than ours; nor did he believe, with the gentleman from Kentucky, that the Judiciary power was the only one that was progressive. By our legislation, Mr. H. said, we threw too much into the hands of the Judiciary; and if they passed the Bankrupt Bill which had been reported to the Senate, they would give the Judiciary more additional power than any act which had passed Congress since the time of the adoption of the constitution. Mr. H. said he would go further than the gentleman from Kentucky did. That gentleman considered the judicial power as a monarchy; Mr. H. said he considered it as something more: a monarchy was generally limited by the legislative power; there are few monarchies that are above it; but how is it with the Judiciary? Our Congress of the United States is one limited in their legislation by the constitution. It is not its expounder; it is not an efficient expounder, because, though we may explain the constitution, and pass a law on our own exposition, yet that law is to be expounded by the judges. But they can expound our constitution, and have efficient power to carry their decree into effect. You have none. They have done it: they issued their mandamus to Virginia, and she not obeying, they issued a decree, and

executed it by the hand of their own marshal. The constitution is above Congress, but the judicial power is thus above the constitution: because they having the right to expound that constitution their own way, you have no control over them, and they make of that constitution what their exposition shall please. I would go very far to restrain this judicial power: I would require unanimity in the judges in all constitutional questions; at least more than a majority; still I would not encumber this bill. The want of this bill is a subject of universal complaint in the Western country. We have been trying to get something to satisfy them for several sessions past, and we have hit on this as the least objectionable; and, sir, if we pass this bill with those amendments, which will be debated in this and the other House, it will be hanging a millstone about the neck of the bill, which will sink it. If the gentleman will bring forward a bill embracing this principle, I will go with him, and discuss it. I am inclined to believe I should vote for the principle, and even go farther. The gentleman will recollect that one of his objects is perhaps attained. Of what does he complain? Of danger to the State Governments? Why was this Senate constituted the guardian of State Governments? Was it to guard the large States against the small? No, sir, the reverse. It was to guard the small States against the large, to prevent them being swallowed up by the large ones. By increasing the number of judges, what is the result? It would be difficult to take all these judges from the large States; if they are limited to five or to seven, as at present, it would seem necessarily to result, that these large States having so much more to give, the judges would be selected from them. They coming from a large State, would entertain the same feelings of the State they came from; and they would have a national in opposition to State feeling. If the number is increased to ten, a portion of them must be taken from the small States. The rights of the small States are to be guarded; and that is the reason we hear of an equal representation. Instead, therefore, of increasing the danger by increasing the number, you diminish it. This is one of the reasons why I was in favor of the amendment proposed the other day. I was in favor of throwing the district of small States together, that they might have an opportunity of having a judge who would have some feeling in favor of the rights of the States against the national right. One part of the object wished for by the gentleman from Kentucky, is already obtained in this bill. The object is to require a greater unanimity of the judges in deciding certain constitutional questions. There is greater unanimity required by the judges by this bill in deciding all questions. Does the Senate understand me? At the present number, seven, one-seventh may create a majority. By the bill before you, (increasing the number to ten,) one-fifth would be necessary to create a major-

ity. One-fifth is more than one-seventh. You require six out of ten, that is, one in five; you require now only one in seven; the majority, therefore, by this bill, will be greater.

Mr. WHITE, of Tennessee, said he should not discuss the general principles of the bill, or the amendments of the gentleman from Kentucky. For himself, whatever opinion he entertained of the principles involved in these amendments, he should be constrained at present to vote against them. The object of the first amendment was to modify one of the sections of the original bill passed by the House of Representatives. According to that, said Mr. W., the Supreme Court is to consist of ten judges, and six of these are to form a quorum for doing business. The first part of the amendment proposed by the gentleman from Kentucky, is to require the concurrence of the opinions of seven of these judges, in a certain class of causes that may be brought before them. The second part of the amendment embraces a new principle; it is a new subject, not touched upon in the original bill in any of the sections. For myself, were I ever so well satisfied that both the principles embraced in the amendment offered by the gentleman from Kentucky, ought to be adopted, I should be decidedly of opinion that neither of them ought to be incorporated with the present bill. I believe it is a matter of great importance, that this bill should pass—firmly believing, as I do, that a large portion of the United States will be benefited by having, effectually, the operation of the Circuit Courts of the United States. I should not feel justified in adopting any amendment whatever, which would endanger the passage of the original bill. What will be the effect of introducing the proposed amendments? The probability is, that they will defeat all the benefits that are expected to be derived from an extension of the circuit courts to nine of the States of this Union. It will defeat all the benefits which that portion of the United States expected to derive from an improvement in the Judiciary of the United States. We are now acting on a bill which has passed all the forms of legislation in the other House: and if we adopt this amendment, what is the consequence? The bill must be returned to the other branch of the Legislature for their concurrence; and it is not probable that they will take them up to give them that deliberate examination which will be necessary, to gain them the sanction of a majority of that House. If they are introduced here or there, in the form of a distinct bill, it will have three readings, and there will be ample opportunity for the discussion of the principles on which each branch of the amendment rests; and after undergoing a fair and thorough consideration, it will be adopted or rejected. I am unwilling to jeopardize the benefits which will result from the original bill, by introducing these amendments, or any other, that embrace any principle of a general

nature, that will require much consideration before a majority of that House will yield its consent.

Mr. VAN BUREN said he had listened with great attention and profit to the gentleman from Kentucky, on the subject of his proposed amendment; but he could not vote for it in the form in which it now stood. Not that he was opposed to the principle, but he did not think they were properly connected with the bill now under consideration. The general rule, Mr. V. B. said, which would influence his mind on this subject, had already been stated by the gentlemen from Maine and Tennessee; his object in rising was to state one or two facts. With respect to the first branch of the amendment, which required a certain number of judges to unite in the decision in certain cases, that subject was proposed when this bill was under consideration in the other House; it was discussed at large, and was resisted there on the same ground on which it is resisted here, and was finally rejected. It was in order, and proper, Mr. V. B. said, to advert to it. They knew, in all probability, that the adoption of it here, would serve no other purpose than to retard the passage of the bill, which he believed was necessary should soon be passed, that the advantages expected to be derived from it might soon be realized.

With respect to the second branch of the amendment, that subject also had been referred to the Judiciary Committee, and had received a good deal of their time and attention; and for himself, Mr. V. B. said, he thought the amendment proposed by the gentleman from Kentucky, with some modification, would remedy the existing evil. The proposition was in itself proper and right; and he should be willing to unite in a report of the Judiciary Committee, recommending its adoption, with some alteration of the details. There is a bill now pending in the other House, containing the same provisions, as far as the United States are concerned. When that bill came here, Mr. V. B. said, or when the Judiciary Committee were referred to on the subject, he would lend his aid to carry into effect the views of the gentleman from Kentucky on these two objects. He was certain that some modification would be necessary; it was an object that had but recently been brought before them, and, connected with this bill, he was opposed to it, for the reasons he had stated.

The question was then taken on the amendment, and lost.

TUESDAY, April 11.

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Mr. ROBBINS, of Rhode Island, addressed the Senate, as follows:

The only effect of the proposed amendment, is to apply the present system to parts of the country to which it is not now applicable; so far it is a remedy, such as it is; so far it supplies

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an existing defect; but the evil of the system itself, the intrinsic evil, and that is great, and one that calls loudly for redress, is left without any remedy at all; indeed, the proposed amendment tends rather to aggravate that evil. And what makes the proposed amendment the more aggravating is, that a remedy for this intrinsic evil would supply the defect to be supplied by the amendment, and supply it in a much better manner than will be done by the amendment: and further, that, by adopting the proposed amendment, we put the remedy of the intrinsic evil out of our power, now and hereafter, but with very great inconvenience and difficulty: indeed, if this amendment is adopted, for one, I shall despair of ever living to see that remedy applied.

The defect now proposed to be supplied, is a growing defect; the time is coming when this growing defect will call for another supply of judges; having begun with this plan, we must go on with it; and the Supreme Court will become so numerous that the sense of individual responsibility will be lost by being divided with the numbers that will compose it.

*Numerus defendit*: this ought never to be applicable to a judiciary body. It will in this way become applicable to the Supreme Court of the nation, and numbers will defend it; will shelter the individual from individual responsibility to public opinion; that best of all possible securities against his inattention, against his negligence. It is no answer to say you will have this security as to the judge on his circuit—that signifies nothing, if you are to lose it again on the Supreme bench.

It does tend to this—it will come to this in time: that this multitudinous Supreme Court will be little better than a mere registering court of the judgments and of the decrees of the inferior courts. This is the natural, the necessary tendency of the principle on which you are making this amendment; I see it plainly; it is too obvious not to be seen, I should think, by every one—it must, it will come to this result. For, when our present territories shall be States; when some of our present States shall become divided into other States, as they probably will be; when the whole valley of the Mississippi from the Alleghanies to the Rocky Mountains, from the Lakes to the Gulf of Mexico, shall be full of people, full of business, full of wealth; (and time is rapidly rolling on this state of things,) will your four itinerant judges of the Supreme Court suffice for the courts of these boundless regions of country? for these countless multitudes of men, compared with which, any one kingdom of Europe would dwindle into insignificance? No, sir, not four, nor ten times four, would suffice. Yet this is the very state of things into which you are precipitating the country, by adopting this amendment; by riveting upon the country the necessity of going on with this miserable system of adding and adding and adding judges upon judges, and judges

upon judges, to constitute your Supreme Court. Sir, it will not do—it is infatuation to think it will do. It is worse than tampering with a malady; it is applying a remedy that is in itself a disease, or the cause of disease, and much worse than the malady itself; a remedy as much worse as bad medicine, as poison is even worse than no remedy at all.

No man has said, no man will say, that this plan of a Judiciary will do for any length of time. All agree that it will not do; that sooner or later it must be abandoned, and a different plan adopted; one better adapted to the circumstances, and to the future progressive growth of the country. But the advocates of the plan content themselves with saying that it will do for the present, and for a while; perhaps for twenty years to come; and add, not very commendably, let those that come after us provide themselves a better. Is this the language proper for a grave and provident legislature, upon so grave a concern as a Judiciary for the country? Of all things, ought a reform of a Judiciary to be a temporary expedient?—knowing that it must be temporary, knowing that it must give place to a better, and knowing that it must operate as an impediment to a better. And will it be no impediment to those that come after us to have a host of supernumerary judges on hand, which your proposed plan will have entailed upon them? Will not that be an argument with them to go on as you will have begun? But you admit that they cannot go on; that they must, this difficulty notwithstanding, abandon your plan and adopt another. And why will they adopt another? Because, and only because, the reasons recommending it will make it a preferable plan: and pray, are not the same reasons as good for us as they will be for them? Surely they are: for the reasons must arise from the nature of the thing itself, which must be the same now as then; must arise from the superior intrinsic excellence of the system to be adopted, compared with the system in practice. We go on, then, if we proceed with the plan proposed, upon the presumption that those who come after us will be wiser men than we are; so much wiser, as to undo what we shall have done, and do for themselves what we ought to have done for ourselves and for them too. Why do we do any thing now? Because something must be done to appease the complaints of those parts of the country to which the present system does not extend itself—we extend the system to them to appease those complaints; and why do we not go further, and make the system what it ought to be, and what we admit it finally must be? Why, I ask again? Is it because some difficulties are to be overcome? Some divided opinions to be reconciled? Some prejudices of different kinds to be encountered? Is it then the part of statesmen, not to wrestle with difficulties, and overcome them, but to evade them by shifts and temporary expedients? It is the most

short-sighted of all policy in all pursuits, whether by individuals or by the public. Difficulties evaded, but not overcome, are sure to return upon us again and again, till they either master us, or we master them. Surely then it is better for us to meet, and to overcome them, if possible, in the first encounter. I said that the intrinsic evil of the present system was great, and one that called loudly for redress. Now, what is that intrinsic evil? It is this: that the final justice of the country is so obstructed by delay, and encumbered with expense, that it is in effect denied to the great body of the citizens; an evil that is necessary and inherent in the system itself as at present organized; and is a growing evil.

As to the fact of delay, it is too notorious to require formal proof; if doubted by any one, that doubt will be removed by inspecting the docket of that court; the delay of trial by the course of the docket, and in that course is about three years. The delay is gaining ground from year to year, and it must keep gaining. At the late term, only thirty-six causes were disposed of in the regular course of the docket, and sixty-three new cases were entered; and of the entries in the vacation, we do not know how many there will be, but probably a considerable number. The docket now stands at about two hundred. And it is nothing but this very great delay, and the serious evils attending it, that prevents the entries from being much more numerous, even more than double what they now are. Nothing, in a word, prevents the delay from being at this moment altogether intolerable, but the difficulties interposed between the citizen and the final justice of the country.

It is proverbial that the delay of justice is injustice: it is true as most proverbial sayings are. It often happens that there is no difference between the denial of justice and its long delay; it comes too late when the unhappy suitor has become the victim of its delay; a too frequent result.

But the enormous expense and consequential losses caused by the delay, is a still greater evil; many a citizen is thereby shut out, and out off from all access to the final justice of his country. Men of moderate circumstances, and this is the condition of the great body of the citizens, cannot encounter these expenses and the other evils of this delay; they must compromise in preference, in the best manner they can; if they do not, they incur certain injury, they risk their probable ruin. And what a Judiciary is that, where only the rich can command its final justice, and where the middling classes must take of the rich only such justice as they may voluntarily accord them? I say, the wealthy litigant is enabled by this system to dictate his own terms of compromise to his antagonist who is not wealthy. He has done it, and may always do it.

Now, what is proposed as the remedy of this evil? proposed by this bill, I mean. It is the

addition of about twenty days to the annual term of the Supreme Court. Can any one suppose that this can remove the evil? So far as it goes, it palliates the evil; but as a remedy it does not deserve the name. I do not think it will reduce the present delay at all; it may keep down the evil to what it now is, for a time; it may balance the gradual increase of the business of the court from the gradual increase of the business of the country; but more than this it cannot be expected to do; nor this for any great length of time; then it leaves it to become a growing evil, as it has been. It may enable the court to dispose of ten or fifteen cases more than they now can at the term. This will not exceed, probably will not equal, the annual increase of the annual docket.

Now, what is the remedy for this intrinsic evil of the system itself? It is this—to confine the Supreme Court to the duties of the Supreme Court. Then the business of every term will be done at every term; then the court might hold different terms, annually, at different places, and accommodate, thereby, every part of the Union. This would remove the evil of delay entirely—would reduce the costs of litigation within reasonable limits—would put the final justice of the country within the limits of the country—would remove complaint—would give satisfaction. No one can say that this plan is not for the interest of the private suitors; and why should not that interest be consulted, even especially consulted? The great mass of litigation is an individual concern. Why, then, the interest of the private suitors should not be consulted, and especially consulted, I cannot understand, but, for some reason, I do not know what, that interest is not regarded. If the Legislature, or any of its members, are jealous of the Judiciary—(I see no reason for any jealousy)—but, if they are jealous, is that a reason why the interest of the private suitors should not be consulted? The power of the Judiciary is what the constitution makes it, and must be, till the constitution is altered; and a modification of the system that would confine the Supreme Court to the duties of the Supreme Court, will not enlarge or diminish that power; but would leave it just what it now is. If the States, or any of them, have their griefs, or their fears, occasioned or alarmed by this department, with or without reason, why should that be permitted to affect the interests of the private suitors? If the prostration of State rights, or if the consolidation of the Union be the danger felt or affected, this danger is independent of the modification of the system—it is unaffected by this modification—it is neither more nor less on account of this modification.

Again: this separation—(but if what I am now going to say should excite some surprise, let me be heard out without prepossession; let it be considered before it be rejected; let me say, with Themistocles, "strike, but hear me")—I say, then, that this separation of the

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duties of the two jurisdictions, the original and the appellate, was intended and expected by the constitution. The constitution does not make a judge of the Supreme Court, *ex-officio*, a judge of the inferior courts. He may be made so by special appointment and commission; but he is not so *ex-officio*. The contrary construction and practice under it, is one that, one day, may give rise to questions that may involve consequences it were much better to avoid. It may do well enough as long as individuals alone are concerned. But a time may come, (God forbid that it should come,) when combinations of men, under the connivance or countenance of a State or States, shall resist the execution of the laws; and shall defend themselves, or be defended, on the ground, that the inferior courts have no constitutional power to enforce them. It is easy to conceive how this might involve the Government in difficulties of the most embarrassing nature; it is not necessary to point them out; they will suggest themselves to every reflecting mind. Is it advisable to leave the country exposed to this possible danger? It may be said that this danger may be prevented by special appointment and commission of the judges of the Supreme Court as judges of the inferior courts.

But would this be advisable now? Is it not too late; would it not tend to throw a doubt over questions that are now considered as at rest, and which ought to be so considered; over the whole train of decision heretofore made by the inferior courts? Will it be said that this danger is built upon an imaginary foundation? I put it to every lawyer in the Senate, to say if the constitution makes a judge of the Supreme Court, *ex-officio*, a judge of the inferior courts. The constitution vests the judiciary power in one Supreme Court, and in such inferior courts as Congress shall establish; it gives to these inferior courts the original jurisdiction, and the appellate jurisdiction to the Supreme Court; but it does not say that the judges of the Supreme Court shall be judges of the inferior courts, as it would have said, had this been intended; but it does say what amounts to saying the contrary; it says, "that *the judges*, both of the Supreme and inferior Courts, shall hold their offices," &c.; clearly implying that the judges are to be different persons. I ask the learned lawyers of this Senate, whether the judges of the Supreme Court are, *ex-officio*, judges of the District Courts? Why not, if they are, *ex-officio*, judges of the inferior courts, of which the district is one? But will any one pretend this? I presume no one. If, then, the constitution intends a separation of the two jurisdictions, and to have them exercised by different persons, why should we hesitate to make the separation, when it is required by the constitution, and recommended by the special interest of every suitor to those jurisdictions.

It appears to me, also, to be wrong in princi-

ple, that the two jurisdictions should be blended together, and exercised by the same person. To give an appeal from a judge to the same judge, would be a mockery of the suitor; the pride of opinion, the pride of consistency, the pride of reputation, incident to human nature, and inseparable from it, and to be found in the judge as well as in every other man, would make such an appeal a mere mockery to him. Who, in his senses, would expect a judge to convict himself of error of opinion? If there are some instances on record, they are few, precious few, indeed, of such magnanimity; the very admiration which they excite, is a proof how very little they are to be expected. The appeal here, it is true, is to the same judge, conjointly with the other judges; but he himself sits, or declines sitting, according to his own sense of propriety. I believe, in practice, he declines sitting; but all the judges stand in the same relation to him that he stands to them; their judgments, in turn, are to be reviewed by him. This situation creates a bias, necessarily, unavoidably; no doubt unconsciously to the judge himself; but it does create this bias. I do not say that it has any decisive influence; far from it; but it has an influence; the mind does not remain indifferent; it ought to remain indifferent; that influence ought to be prevented. All human institutions must be predicated upon a reasonable confidence in human virtue; it is equally an error to suppose an entire want of virtue, or to suppose that virtue perfect; this plan of blending the original and appellate jurisdictions together, to be exercised by the same person, supposes a degree of virtue in human nature that is not to be found in it; at least, that will not ordinarily be found in it. If the suitor is to have the full benefit of an appeal, these jurisdictions ought not to be blended; he has not that benefit if they are not separated; he is denied the privilege intended him by the constitution.

But, be this as it will, the time must come when these two jurisdictions must be separated; this will become a matter of physical necessity.

Some of your children—perhaps some of you, will live to see the day when the people of this country will be some thirty millions and upwards; when the business and wealth of this people will be in proportion to their numbers; it may be far beyond that proportion. Can any one imagine that one court can do all the duties of both jurisdictions, the original and the appellate, for such an immense nation as this will then be; for such immense concerns as these jurisdictions will then embrace?—embracing, as they do, every species of jurisprudence, the criminal and the civil, the Chancery and the Admiralty; embracing, as they do, the whole range of jurisprudence that occupies all the different courts of Westminster Hall, the King's Bench, the Common Pleas, the Chancery, with her two courts, the Admiralty, both the vice and the appellate, the Exchequer and Doctor's Commons; and you may add to these the House of Lords, when sitting as a Court of Errors in



the last resort. It will be an impossibility, physical as well as moral, that one court should do all these duties. The separation, then, must take place—why then hesitate or delay to make a change, that, whenever made, will be for the better, and which must be made, sooner or later? Why, when you are compelled to make a change, and are about to make it—why not make it such as it must be made hereafter, if not now? Why not provide for the future as well as the present, when, in providing for the future, you will provide for the present in the best possible manner? Why prefer a temporary amendment to a permanent one, when the temporary must give way to the permanent; and when, in the mean time, it is much worse than the permanent? I cannot conceive of greater want of providence, greater want of wisdom.

The gentleman tells us it will be dangerous to have the Supreme Court stationed and stationary at the seat of Government; that the court will become dangerous to the Government, and the Government dangerous to the court: but that this danger will not exist at all, if the court go the round of the circuits, in the recess of Congress; and are here only about two months during the session of Congress, if they are here only as boarders, and are not domiciliated here.

How these important results would be produced by these means, the gentleman left us to find out by our wits. I really wish he had favored us with a short lecture upon this point, and told us the *how*, the *why*, and the *wherefore* of all this danger, and of its prevention, the *modus operandi*. For one, I profess myself in want of instruction; I am in the dark; I am ready to cry out, as some of us did on the Panama question, for light; light, pray give me light; it is all enigma to me; I wish the gentleman had, and still would unriddle it: say how it is, that this judge is this harmless being, if he is kept rambling about the country a part of his time; but if he is kept all the time at Washington, he will set himself to work at undermining the constitution, or at some mischief or other to the Government; for the gentleman has not told us precisely what the mischief is to be, and how it is, that the Government, if he is at Washington all the time, will confederate with him in this mischief; but if he is here only a part of the time, will not have a thought of the kind; and also, how the "*esprit du corps*," of which he spoke—how that is to depend upon the locality of the corps—how upon its being stationary; and how that is prevented by its being partly itinerant, and partly stationary. All these *how*s I hope the gentleman will explain to us, if it will not give him too much trouble. And another thing I wish the gentleman would tell us, when and where he made the discovery, that if we found it so dangerous to have the Supreme Court stationed at Washington, we could not station it somewhere else. I find nothing in the constitution to prevent it; and the law for this purpose will be just what we please

to make it. Let the gentleman, then, give us the distance at which the Supreme Court may be stationed, and be safe to the Government, and from the Government, and there it shall be stationed; that is, when he has proved the fact of danger. Then, so far as concerns myself, he shall have a *carte blanche* for fixing the place. He may fix it at Baltimore if he pleases; if that is not far enough, he may fix it at Philadelphia; and if that is not far enough, he may fix it at New York. I am apt to think the gentleman would think that a safe distance, and the proper place. But, as the gentleman has such faith in itinerant judges as an antidote to this danger, let the Supreme Court be itinerant, and hold their sessions at different places, but within practicable distances. This, I think, ought to be, not on account of the gentleman's danger, whatever that may be, but because it would be an immense accommodation to the country.

As to the very great powers of the Supreme Court, taking the gentleman's statement in this respect for fact, as I do, I would ask him whether these powers would be any greater by the Supreme Court being made stationary at Washington? or any less by its judges being made to itinerate the country? If not, what signifies it what their powers are as to this question? If their powers are too great, so great as to be dangerous, that is the fault of the constitution, and the remedy is an amendment of the constitution; the danger is independent of the judicial system, and of every modification thereof; for, in every form thereof, the powers will be the same. The gentleman complains that these powers ride over the laws of the several States, in certain cases. They do so; such is the constitution. There is no help for it so long as the constitution remains as it is. But these powers have been exercised in derogation of these laws, and the rights acquired under them; and in every instance the court have decided against the State in favor of the individual. Be it so; it is singular that this should be complained of as a grievance, and yet made an argument for continuing the very system under which it has been suffered.

There might be some plausibility in it if the Supreme Court had been stationary, and all this had happened, then to apply it as an argument in favor of a change to the itinerant system. It might be speciously said, that the grievance was owing to the court being stationary, and to the influence created by that circumstance; and that to make the court itinerant would be to destroy this influence. But when the grievance has happened under the itinerant system, to make the grievance an argument for continuing that system, appears to me (begging the gentleman's pardon) not a little preposterous.

But, to return to my object—how would the intrinsic evil of the system supply the defect to be supplied by the proposed amendment? In this way. This separation of these jurisdictions would induce the necessity of establishing separate courts, for the exercise of the original

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jurisdiction. A system that is much preferable to the present, for very many reasons; but I shall mention only two, as these appear to me decisive, and to settle the question of preference. These original courts, as they might be constituted, and probably would be constituted, would supply at once all parts of the Union with a competent Judiciary, and the system will adapt itself to the future wants of the Union, as they may arise from time to time. There will be future calls for additional courts; but never any call for any amendment of the system. It is a system that looks to the future as well as to the present, and to all future times; and will be equally suitable to all; it will expand itself as the country expands, accommodating equally all parts at all times. Then these circuits, besides being equally competent with the present in all respects, in one particular, and that one of the greatest importance, would be pre-eminently superior. The local law is the law most dear of any to the people of the several States; and justly so; it is made to them as they are made to it; their affections are wedded to it; it has become, as it were, "bone of their bone, and flesh of their flesh." Now these local judges will be much more competent judges of this law, as well as much more tenacious of it, than the itinerant Judge of the Supreme Court. These local judges will have been bred to this law, and bred in it; they will be its able expounders and zealous defenders; and their decisions will be the best of all instructors to the Supreme Court itself upon questions of this law. Their decisions will, in a manner, become authorities upon that law with that court. It is true, that the itinerant judge has the district judge to sit with him, and to give him information; but, the objection to this is, that it is given transiently, and acted upon suddenly. How infinitely preferable must be the judgment of coequal judges deciding from antecedent knowledge, from familiar experience, from mature consideration? Who would not trust to such judges all questions of local law, in preference, not only to a single itinerant judge, but to the whole bench of the Supreme Judges? Not one, I venture to say. It is strange to me, that my friends, the Western gentlemen, the pride of the Western country, and of whom the Western country has reason to be proud, should hesitate one moment to prefer this system to the poor diseased system that is offered by the proposed amendment; that must be temporary, and while it lasts will be a miserable one, and not to be compared in use and usefulness to the one they may have.

But, the honorable gentleman from New York tells us that the system of local courts, for the exercise of the original jurisdiction, will be unpopular. He says this on conjecture merely, and against all the probabilities of the thing; it is to be judged of by comparison with the present system: does he mean to say that the present system is so very popular, that any

change of it would be unpopular? One would think, from his own account, it was not very popular with him at least—that at best it was but a necessary evil. I hope it is; I think it is more popular with others, but I do not think it so very popular but that a change for the better would be borne with, and without producing any popular commotion.

It will, as I said, be judged of altogether by comparison; and that must be in favor of separate courts for the exercise of the original jurisdiction. That plan is better in itself; it is better for the present; it is all better for the future; so obviously so, that it speaks its own preference, and speaks it to every mind. I venture to conjecture, (and I have as good a right to conjecture as the gentleman, and better grounds, I think,) that these courts would become the most popular courts in this country—the most popular with the suitors, the most popular with the bar, the most popular with the people. These courts would be the means of making the national Judiciary the national favorite, as well as the national pride. The gentleman has alluded to a similar system, that was once adopted, and soon after laid aside; and hence infers, that the system itself is unpopular. The inference is incorrect; the men who made that system, made it unpopular, and nothing else. It was not the thing itself, as being bad in itself, that caused it to be laid aside—it was the supposed calculation of the thing; it was the political effect of the thing that was the cause.

It was made by a party going out of power, in the last moments of power, and to secure in their hands (as was believed by the party coming into power) the whole Judiciary power of the country, to be wielded for their own political purposes; and the system was broken down to frustrate this calculation, and to wrest this power out of their hands. The ostensible objection, it is true, was to the thing itself, but as it could not be shown to be bad, the thing was stigmatized; it was called by many bad names; among others, by the name of the midnight Judiciary; and the bad name raised a hue and cry against it, and not the demerits of the system itself. It was deemed reason enough by the triumphant party, that it was presented to them by the defeated party, retiring from power. I remember it was said on the occasion, "*Timeo Danaos et dona ferentes*," the designs, the wiles of the Greeks were feared, and the present was rejected.

But, I speak from knowledge, in a large district of country—from information, as to a much larger, and from belief, as to the whole country, when I say, that these courts, as courts, by all the suitors to them, by all the bar connected with them, were esteemed by far the most popular Federal Courts which we have ever had in this country. There is not the least reason to believe that such courts would now be unpopular.

The gentleman supposes the district judges would be in the way of this arrangement. It

is true, they might be dispensed with; but no one would think of displacing one of them; nor is it necessary. Their jurisdictions might be transferred to the Circuit Courts, to take effect when their offices became vacant, and as they become vacant, and, in the mean time, to be exercised as they now are.

The gentleman very properly admitted, that the expense ought to be no objection, but seemed to apprehend that the people would think it one. There again, I think he is mistaken. The worst of all economy is that which is practised at the expense, and to the prejudice of judicial establishments; the people so view it. There is no institution which they regard with so much partiality; and the expense of which they so little regret, provided the institution is made as perfect as it may be.

I hope I need make no apology for the time I have taken up on a subject so important as that of improving the National Judiciary. No function of the Government is so interesting to the nation as the administration of the national justice. It touches directly upon every individual; it is felt by him as his own immediate personal concern; it is looked to by him as his shield and his sword, to protect his rights and to redress his wrongs. Other functions of the Government are interesting too; but not so immediately interesting; their effect upon the individual is indirect; they act upon circumstances which, in their turn, act upon him; thus and thereby affecting his condition in life, more or less favorably. But, it is distributive justice, and the hand that makes the distribution, that is watched and regarded by every one; for it is that hand which is to lift this shield for his protection, to wield this sword for his redress.

WEDNESDAY, April 12.

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Mr. WHITE, of Tennessee, rose and said, if it could be shown that the remedy proposed to obviate the inconveniences complained of in those sections of country, would be injurious to the whole Union, he ought not to expect, or to wish that their special inconveniences should be removed to the injury of the whole community. The subjection which we are about to legislate, said Mr. W., is, in my mind, one of infinite importance. We are about to pass an act in relation to a department of the Government which every man feels and ought to understand. It is in vain we enact good laws unless they are well administered—it is that department of Government which operates directly on the persons and property of individuals who happen to be citizens of the United States, so far as the jurisdiction is local, or so far as it relates to the internal concerns of the citizens of the respective States. So far as it may operate on general principles it is still more important—therefore have I heard with great attention every thing that has been urged by gentlemen who are opposed to it, and I shall still be glad to hear all

further objections that can be urged. We cannot judge whether the alteration will be beneficial or injurious, without first making ourselves acquainted with the inconveniences which are supposed to exist. Till we are acquainted with the disease we cannot tell what will be a suitable remedy. I think I can, if favored with the attention of the Senate, if not already satisfied on that point, satisfy them that the disease lies much deeper than the gentleman from Rhode Island seems to suppose. I paid great attention to the argument, and he seems to think, so far as I can understand it, that the main grievance which we are called on to remedy, is the *delay* which takes place in the Supreme Court of the United States. He has not even, in his excellent argument, given the most distant glance at the situation of that section of the country which is on the other side of the mountains, to see what the local inconveniences are, and whether the remedy he proposes would be a suitable one or not. The grievances which do exist in the country, are, as I think, of two kinds; one in the manner in which the business is conducted in the respective States; the other, that which exists in the Supreme Court itself: and this latter does not consist so much in the delay, as in the incorrectness of the decisions where the questions depend upon the municipal laws of the respective States.

These are the grievances which exist, and which it is the object of this bill to remedy: First, by extending to nine States the circuit system, which is applicable to, and practised in, *beneficially*, the other fifteen States: and secondly, to increase on the bench of the Supreme Court, a knowledge of the local laws. Those are its leading objects. These nine States, when we look to them, we find thus circumstanced; six of them have never had, either nominally, or in fact, the benefit of a circuit judge: three of these States have had nominally, and to a very limited extent, the benefit of the attendance of a judge of the Supreme Court from the year 1807 up to this time. I say they have had it nominally, but not so in point of fact. When the judge of the seventh circuit was in the vigor of life, and in the enjoyment of perfect health, it was his duty to attend and hold Circuit Courts in the Districts of East and of West Tennessee, of Kentucky and Ohio, and from the necessity he was under of leaving one court in time to arrive at the next, in his circuit, an opportunity was not afforded him of disposing of the causes on either docket. For example, he would have suits enough in West Tennessee to require a session of two months, but at the end of three or four weeks he was compelled to be at Kentucky, distant two hundred miles, and so on; and thus it happened either that the district judges must continue the courts after his departure, or the causes must remain undecided. In important suits parties would not be willing to trust the opinion of the district judge alone, and he would willingly yield to applications for delay, until he could have the assistance of the Judge of the

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Supreme Court, and thus the business must be either long delayed, or, in most instances, decided in the Circuit Courts of those three States, by the district judge alone. For several of the last years of Judge Todd's life, his want of health put it out of his power to attend his Circuit Courts, and thus it has happened that the business in Tennessee, Kentucky, and Ohio, has accumulated to an unreasonable extent, and those States have, in truth, been no better provided with an opportunity of obtaining a due administration of justice in their Federal Courts, than the other six Western States; and how is it with regard to them? They have never had the benefit of the circuit system, even nominally. They have each a district judge, who does all the duties which other district judges perform, and vested with the jurisdiction which other Circuit Courts possess in the other States. So far as relates to the grievances which exist in the country, we are safe in considering the whole nine States to be practically in the same situation. When we come to look at the laws which vest the courts with jurisdiction, we find that a large portion of the jurisdiction which is to be exercised in those nine States, is of that description which falls within the jurisdiction of a Circuit Court, and not within the jurisdiction of a District Court. A District Court, as such, can have no jurisdiction of suits between A and B, whether citizens of the United States, or of different States. Some attempts have been made to get them to entertain jurisdiction of suits between citizens of different States, when the matter in dispute is of more value than twenty, and of less than five hundred dollars, but, so far as I know, they have been unsuccessful.

As it relates to a great portion of the jurisdiction which is to be exercised in those nine States, the Senate must see at once, it is of that class of cases which belongs to the Circuit Courts in the other States. What is the situation of these other States? They have, in point of fact, as well as in point of law, a Circuit Court composed of one Judge of the Supreme Court, and the district judge. When a suit is brought, and the matter in dispute exceeds the sum of two thousand dollars, upon the trial, the parties have the benefit of the opinions of two men, which will, in most instances, be satisfactory; but if not, the unsuccessful party can remove it to the Supreme Court and there have the judgment revised, and if wrong, reversed. If the matter in dispute is less than two thousand dollars, and the judges disagree in opinion upon any point, either party can have that point certified to the Supreme Court, there revised, and the judgment of the Circuit Court rendered in conformity with the opinion of the Supreme Court. In all criminal cases the defendant has the like advantage. How is it in those nine States? In no case, either civil or criminal, can the parties, in the Circuit Court, have any opinion, but that of the district judge, which in every criminal case, and in every civil one, where the matter in dispute is of less value than

two thousand dollars, is final and conclusive, whether right or wrong; and in all civil cases, although an erroneous judgment may be revised in the Supreme Court, it is an expense and trouble which would often be avoided if two judges sat in the Circuit Court.

Tennessee was admitted into this Union upon an *equal footing with the original States*, and so have the other Western States been. These States feel that this promised equality has not been extended to them; as sovereign States, they insist that their citizens must be placed in a situation that their persons and property shall be equally as safe in the Federal Courts, as the citizens of any other State are in their persons and property. With nothing less than this will they be contented. But, it is said, the proper time is not come; we are used as well as others have been used. I should be glad to know when the time will arrive? Tennessee is thirty years old, Kentucky is older. Ohio came into the Union in 1803, Louisiana in 1812, Indiana in 1816, Illinois in 1818, Missouri in 1821, Mississippi in 1817, Alabama several years ago. Will the gentleman tell us when it is we shall have arrived at such mature age, as to entitle us to the same benefits of the Federal Judiciary that are enjoyed by the other States? Sometimes they are willing to recognize us as at years of discretion, to put their dearest interests in our keeping. Personal services, money, any thing we have, we are disposed to render freely, our full share of, according to our abilities. We are willing to do our duty; and I call upon the Senate to say whether they do their duty to us, if they do not put the administration of justice on the same footing in the Western States, as it is in the others. Is not the life of a man in any one of these nine States, worth as much to society as it would be, if he were a constituent of the gentleman from New Hampshire, or Rhode Island? Is it not reasonable to afford the same man as good a chance for justice in the States where he now lives, as he would have if he lived in any other? Is that opportunity furnished? No, sir, it is not.

But, sir, we are told that the accumulation of business in some of these courts, in the three States, is produced by temporary causes that are passing away, and that there is no necessity for any alteration in the system on that account; that one circuit judge can do all the business in those three States. It is not to pass away so rapidly as the gentleman supposes. I do not doubt the correctness of the statement of any gentleman living in any one of those; he knows what the business is; therefore I do not choose to doubt the correctness of what was advanced by the gentleman from Kentucky. I have before me a certificate from the Clerk of the District and Circuit Court of Kentucky, and at the session of November last, the number of causes on the two dockets combined was 950. As very little business is to be done in the District Court, much the greater portion must be on the Circuit Court docket of that State. How is it in Tennessee? You have the statement of the

gentlemen who belong to the Western part, and altogether it may be estimated at 200. But it is not the number of causes which proves the necessity of a circuit judge, and an extension of the system: this necessity is produced, more by the kind of causes that are to be decided, than by their number. These causes are in their own nature, especially those brought into the Federal Court of Tennessee, of the most litigated description generally. Many of them relate to lands; foreigners claim titles to them, and assert them in the Federal Courts. It is necessary to go back and examine what was the situation of the country forty years ago, and you get into a set of difficulties from which nothing can extricate you, but a patient, laborious, and protracted investigation. They necessarily consume a great deal of time, first, in ascertaining the facts, before a jury who are to decide the cause, and next, in investigating the legal principles which are to govern that decision. To investigate and decide one of those causes, has sometimes taken two weeks; suppose only one hundred causes on the docket, I ask if it would not be more necessary to extend the judicial system through a country like that, than to a place where there were 500 on the docket, of which 30 or 40 might be disposed of in a day. If we were to be governed by the mere number of causes, we would make a most important mistake as relates to this matter. Many disputes in Tennessee relate to lands, the titles to which are founded on the act of 1777 in North Carolina, or the act of 1788, or those acts which these two have given birth to; and in investigating matters of fact, it is necessary to go back and ascertain what were the names of different places at different times, from those periods up to this time; the whole country was a wilderness, and every man who had a claim under these laws had a right to select a piece of land within a certain boundary, of from four to five hundred miles one way, and one hundred miles the other. We had not only to investigate our titles derived from the State of North Carolina, but in some instances, those issued by Virginia, perhaps Kentucky likewise, as disputes respecting boundary with those States once existed, upon adjusting which provision is made to secure individual rights.

We have amongst our own citizens those who claim under Virginia grants, under Kentucky grants, under North Carolina grants, and under those issued by the State of Tennessee. Whenever there is a dispute respecting any of these conflicting titles, they may go into the Federal Court, although the parties may be citizens of the same State. You are extinguishing the Indian title as fast as those people are willing to sell; and wherever you do, the settlements will keep pace with the extinguishment of title. In Tennessee there is a very large district of country, granted to individuals under the law of North Carolina, in 1783, which, until a very short time ago, the United States had secured to the Indians by treaty: that country is

now settling, and every man has to look for the land for which he obtained his patent. Many of these conflict, and whenever they do, and a foreigner happens to be the owner of one of these titles, the consequence is, that the cause goes into the Federal Court. So long as this process of extinguishing the Indian title, and settling the country, is going on, it is in vain for gentlemen to say that those disputes are produced by temporary causes, or that they are passing away: they cannot pass away until your settlements are completed.

Do we not all know that, in 1794, and onward for several years, a great rage for speculation existed in Philadelphia, New York, and the Eastern States; that immense quantities of Western lands were bought up by foreigners, or citizens of other States? considerable quantities were purchased in Tennessee. These companies have found it convenient to part with their titles to various individuals; and those claimants who have got titles in this manner, living in other States, when they come forward to assert these titles, now that the Indian title is extinguished, assert them in the Federal courts.

But, the gentleman says, you have Federal courts, and the people must have confidence in them, because, if they had not, they would sue in the State courts. Will the Senate reflect for a moment, on the idea here suggested, and they will easily see some of the difficulties under which we labor. The titles to land must be settled by the laws of the State in which the land lies. A citizen of another State, or a foreigner, claims title to a tract in Tennessee; he finds a man in possession under a conflicting title. This foreigner can sue either in the Federal or State court, at his election. He submits his title to counsel, who advises him that, according to the decisions of the State courts, the man in possession has the better title. The foreigner orders suit in the Federal Court—there is but one judge, and he, living in the State, will likely follow the State decisions, and give judgment in favor of the defendant. The plaintiff takes a writ of error, and carries the cause to the Supreme Court, before a set of judges, who neither know, nor have they the means of knowing, the local laws, or the true reasons of the decision; and, for want of this information, judgment is reversed, and thus the plaintiff becomes the owner of a piece of property, which he otherwise would not have acquired. Plaintiffs often commence suits in the Federal courts expressly for the sake of gaining an advantage over their adversaries, which they could not get in any other tribunal whatever. And yet, this is the argument relied on to show that Federal justice is well administered to us.

What, sir, is the situation of the other States, Louisiana for example? There are British, Spanish, and French grants: so, also, in Mississippi and Missouri. All these may go, and mostly do go, into the Federal courts, principally for the sake of having these cases removed into the Supreme Court of the United States, if such a

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decision is not given as is satisfactory to the plaintiff. So far as Tennessee is concerned, those who act under the belief that our business has accumulated from temporary causes, are, in the main, mistaken: to a limited extent, no doubt, they are correct. I believe, if our circuit had been one of reasonable extent, and we had had the benefit of our circuit judge, the number of suits on our docket would have been much less. Where a man has a cause which he thinks he ought to gain, if the law is well understood, he will not agree to have that cause tried before any one man, when there is another of a higher legal character. It is a very unpleasant thing to have to settle disputes between man and man; and when it comes to the last stage, there are few men who would not like to be eased of a portion of the responsibility of the decision. If a reasonable excuse can be made to defer it to another term, the district judge will fall in with it, because his associate will then be with him, and he will have the benefit of his opinion, and be better satisfied, if they agree, that he is right, than if there was none with him; and, if he should disagree in opinion with him, by certifying that there was a difference of opinion, it could be carried into the Supreme Court, and no mischief would arise. It is to their credit that they have this disposition. I do not make unnecessary complaints against the district judge of the State in which I live. He is entitled to as much character as any other judicial officer on the score of integrity; and, if he ever does make mistakes, which, I think, is but seldom, it is in endeavoring to attain that which he thinks the justice of particular cases. The people of Tennessee have as much right as the people of any other State in the Union, to have the opinions of two men, who will concur, as to which is right in their disputes. It is vain to tell me we are placed on an equal footing with the other States, while they have one measure of justice meted to their citizens, and the citizens of Tennessee have a different measure meted to them. I would rather you should lop off one of our Senators, or three of our Representatives—reduce us as to the power we have in the Executive and Legislative business of this Government, but let us have, when you come to the practical operations of this Government, that are to take away a man's life, liberty, or property, let our citizens have an equal opportunity, for the administration of justice, with any portion of the good people of the United States.

#### *Rescinding Rules.*

Mr. RANDOLPH rose, and said: Some time ago, I gave notice to the Senate I would, unless the subject should be taken up by some other member of this body more able, but not more willing, to vindicate its privileges than myself, move for the rescission of so much of the new rules of this House, which give to the presiding officer of this body the appointment of its committees, and the control over the Journal of its proceed-

ings. I did give notice on both points, although, the debate being broken off abruptly, for reasons beyond my ken or control, notice appeared in the public papers on the first of these points only—the appointment of committees. I now rise to give notice that I shall, to-morrow, unless the subject be taken out of my hands by some one more capable of doing justice to it, move, and support with reasons for that measure, the restoration to this body of its ancient and accustomed privileges. This body exhibits a memorable, I will not say a lamentable, instance of the tendency of human affairs towards servitude and abuse. To get rid of the trouble of balloting for committees, the subject was placed in the hands of your most lamented and venerable predecessor, who was a member of this House, who was responsible to us for his situation, and who exercised that trust under that responsibility; but who, by my vote, never should have been invested with it, or any other human being, unless, as Jefferson said, we could find angels in the shape of men. In consequence of a fact, as notorious as it was disgusting, the Journal was put under the control of the same presiding officer—a fact to which I allude no further than by the words which I uttered, because it was notorious and disgusting: that fact, with which other facts led to a state of things in this country unexampled, but not unexampled elsewhere; one set of officers to do the duty, and another set to receive the salary. There was a time when these two expressions had their meaning: “sober as a judge,” “as good as the bank;” but they have both lost their meaning. If our officers cannot do their duty, let us put persons in their places that can do it. I rose to give notice only. I shall go back and say, that the Secretary of this House being a sworn officer—being supposed to be competent—being supposed to be faithful—being supposed to be willing to do his duty—to him, and to him only, under the supervision of ourselves, can be safely trusted the control over the Journal, for reasons which I shall humbly submit to this House to-morrow.

FRIDAY, April 14.

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The Senate having resumed the consideration of the bill, and the motion to recommit—

Mr. HARPER, of South Carolina, rose and said, it seems to me, Mr. President, that there are objections to the remedy proposed by the bill on the table, which will occasion danger and inconvenience to the rest of the United States, including the Western States, greater than the inconveniences which they complain of. A better remedy, it seems to me, has been devised in the plan which was proposed by the gentleman from Georgia yesterday. Some of the objections which exist against the bill which lies on the table, have been stated by the committee of this House. They consist in these principally: that it will make the Su-

preme Court too numerous, perhaps it is too much so already—in the necessary course and progress of affairs, it must become more numerous still; and, what is worse than this, it will render it subject to fluctuation, and make it so to be considered by the public at large. There are few who dissent from the proposition, that too numerous a judicial body is an evil, and then the question recurs, what number is too great for a judicial body? Some of the evils attending, are these—It is unfavorable to dispassionate consultation: very numerous assemblies are less capable of it than those which are limited; and as you extend the body, so is it less capable of deliberating without excitement. In a judiciary body, consisting of more than seven, their consultations are not properly consultations, but debates; they are a deliberative body, and the individuals composing it, instead of interchanging ideas, make speeches to influence the rest. There are other inconveniences attending too numerous a Judiciary—they are liable to be divided into knots and cabals. If men of a superior character are found, they will have their followers; and this is more likely to be the case in a large, than in a small body. If the body is too numerous to allow them to consult in the way of free intercourse of thought and conversation, you make it a deliberative body, you assimilate it to a legislative body, and you have the spirit of competition and opposition. What number is the proper one? Why is it that an appellate tribunal must consist of more than one individual? Because you require the lights of various understandings; because one man, be his talents and acquirements what they may, will not look at the case in every point of view; another reason is, that any casual bias in the individual may be corrected. How many understandings brought into consultation, are likely to throw light on the subject? The consultations of a judicial body are different in character from those of a legislative one. In this, or other legislative assemblies, it is not expected that every member should be conversant with every subject brought before him; it is not expected that he should understand every question. But this is expected of every member of a judicial body. He must be conversant with every question that comes before the court, and know all its bearings upon the whole system. As regards the light thrown on the subject by various understandings, I should say that, in general, it is not advantageous to go beyond four or six: circumstances may render it necessary to go beyond that; yet, if that is as large a number as can consult advantageously, exceed it no further than is requisite: have no more evil than that which you cannot avoid. We find it practically even in our deliberative and other bodies. Subjects are brought before us—a few have investigated them, and they have to form our opinions for us, and indicate how we are to act in the particular point brought under consideration.

When we do desire to get exact and detailed information, such as is necessary for a judge to have on every question, the matter is referred to a committee; nor would it be possible for this body, acting as a whole, to get the full information which would be considered as necessary for a judge. A general holding a formal council of war, collects a numerous assembly; but when was a formal council of war known to give useful, practical advice? Wanting such advice, he will resort to, at most, three or four of his most intelligent and best informed officers.

It is said there are other numerous judicial tribunals, from which no inconvenience is found: that there are twelve judges in England who consult each other, and that many cases are decided by the House of Lords. With regard to the twelve judges, they consult, but do not decide; the decision is with the court which has requested the consultation; although, perhaps, it has never happened that the judgment of that particular court has been contrary to the opinion of the twelve judges. It is not expected in the House of Lords, that every lord should be conversant with the subject brought before the House. The judges decide it. The lords may be termed the law jury, and the judges point out, if they can, the error on a particular point that has occurred in the adjudication below. It is but rarely that cases are brought before them; the institution would not answer if appeals were numerous, if the lords were to consider the hearings and operations of the whole system, and the effect every decision must have on the whole system. They may be considered as discharging political functions even in the exercise of their legal jurisdiction. They guard against the political effects which might be produced by the decisions. The court will not only be too numerous for dispassionate consultation, but its composition will, in all probability, be inferior to what it is at present.

Perhaps it would be well to consider for a moment, what the Supreme Court of the United States ought to be, and what ought to be the qualifications of its judges. It has been observed that the Supreme Court of the United States has more important functions to perform than any other tribunal that exists on the face of the earth. It decides in the last resort cases of common law jurisdiction, of admiralty, of equity, and is required to be in some degree conversant with the systems of twenty-four States. It has still more important functions to perform, important political functions. It is made, by our constitution, the arbiter between the conflicting elements of our very complicated system. It is among its functions to restrain every department within its proper orbit. It has offices of immense difficulty and delicacy to perform; it has not only to restrain the power of the States, but also those exercised by the General Government. It may have this important duty to perform, to declare the solemn act of the confederated legislature void, to

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resist the voice of a majority of this whole country. This has been delegated to it by the constitution, and in some cases it will unquestionably be incumbent on it to discharge it. To what sort of a body should the discharge of these important functions be committed? Every one will say, its members ought to possess, in a high degree, talent, firmness, and integrity: and more than these; the individuals discharging duties on that bench should possess qualifications beyond those; they should all be statesmen. They should be capable of combining the complicated relations and parts of our system; our home relations to our foreign relations; they should be conversant with international law; they should be without the manner, party, or passions and views, of politicians: they should be perfectly acquainted with men, with the workings of human passions without being subject to the influence of those passions. These are some qualifications, and such as are not likely to be met with very often. Are they more likely to be found in a larger judiciary than in a small one, in a body of ten, than in one of seven? It may seem like a very insignificant proposition to say, that it is easier to find four such men than ten; yet the proposition is true. It might seem at first view that, by selecting a numerous court, the chance is increased of finding among them a certain number possessing the requisite qualifications, but such is not the fact. Hitherto it has been the case, and it will be again, that a few individuals will be distinguished, will be designated by the public voice as being peculiarly adapted for this, as well as other situations, and but a few. There is one instance to which everybody refers: to the gentleman who now fills the highest seat on our judicial bench. He is recognized by the public voice as having, in a peculiar degree, the qualifications that fit him for that situation. It is reasonable to expect that there will always be a few individuals, who will be thus pointed out by the public voice, as appropriate for such situations; and as you mix them with inferior material, you detract from their value. In a court of ten, the voice of Marshall might not be heard. You diminish the general weight of such men, by putting them in a numerous body. Genius may operate in a crowd; her voice may be heard in a popular assembly, but the calm dispassionate wisdom which peculiarly befits a man for a judicial station, is not so likely to be attended to as in a small body.

If individuals are thus indicated by the public voice as fit for such situations, are they likely to be selected by the administration of the day? Is there any security for that? Yes, there is. There is a feeling that will operate on every administration—that this department of Government is sacred: however, in making other appointments, petty views may operate; yet in this they will not. This has been the feeling of all the administrations we have hitherto had, and it is probable it will be

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the feeling of all future administrations; and if it should not be, public opinion will impose on them the necessity of this course. Nothing could excite louder clamor; nothing would draw down public execration more strongly, than that any administration of this country should select a judicial officer for any purpose of political management.

Are we not more likely also, to get individuals qualified for the situation by selecting them from large districts? Perhaps the present number of judges is greater than is necessary; perhaps the whole of the United States might be advantageously divided into six circuits, six being one of the most convenient numbers to form a quorum. If you have a large circuit from which to select, the judge of the circuit must in general be selected from the circuit. You have a better chance of getting an individual qualified from three or four States, than from one or two. But this is not all; the selection is less likely to be influenced by partial views, or oblique motives. In a single State a man may make himself of consequence by his party zeal, by subserving some purpose of temporary interest; and an individual may be chosen, having an ephemeral reputation founded on other causes than his merit. It is more difficult when you require him to have a reputation over three or four States. He must have something substantial in his character and mind to sustain this extended reputation.

But all of these considerations are of less importance with me than that to which I am about to refer. The judiciary should not be put on a footing that will render it liable to fluctuation; if it is, we have, in effect, no judiciary; we have, in effect, no constitution, so far as the judiciary are the guardians of it. If the judiciary is liable to fluctuation, to be diminished three or four to-day, or to be augmented fifteen or twenty to-morrow, we might as well have no judiciary, so far as it is requisite the judiciary should be, from the consistency of its views and decisions, the guarantee of the constitution.

The idea of judicial representation is on all hands disclaimed in this House, and is admitted to be absurd. We cannot be ignorant, however, of the language which has been used out of doors in the United States. It has been said in the newspapers, and the doctrine has been the subject of discussion, that the particular views and feelings of particular sections of the country, on particular subjects, and those perhaps of temporary interest, should be represented on the bench of the Supreme Court. All admit here that this doctrine is detestable. It is impossible to have impartiality, if those views are carried into effect. Do you adopt this doctrine by adopting the bill on your table? If individual judges are appointed, believing that they were selected with these views, they will be likely to give effect to those views. It is a part of human nature for a man to act up to the character which is



attributed to him. If you expect firmness, moderation, and wisdom, he will endeavor to sustain the character which the world has given him. If you take it for granted that he is to act under the impulses of intemperance and passion, there is no motive for him to attempt to preserve a better character than that which the world has given him; and if individuals are placed on the bench with these views, they will be likely to act in conformity with them.

It has been said that the increase of the number of the judges in the Supreme Court will have a tendency to set afloat all the decisions which have been made in constitutional questions. Whether this is true or not, I do not pretend to say, but certainly it may have that effect. It was intended that the three departments of the Government should be perfectly independent of each other; it was not intended that the individual judges of the Supreme Court, or their decisions, should be under the control of the other branches of the Government; but if, in time of excitement, the majority, having become a faction, is not satisfied with the decisions of the constitutional court, will it not at any time be in the power of the other branches of the Government to overrule those decisions? In England, much alarm was once taken at the creation of many new lords. It was regarded as a dangerous innovation, and an attempt was made to restrain the power of the crown in this respect, though that restraint would have been a change of one of the fundamental principles of their constitution. Yet the check of that branch of their legislature is perhaps less important and essential than that of the judiciary with us. The independence of the judiciary is at the very basis of our institutions. With regard to the act of 1802, whatever may be said of it in other respects, none doubt it was a hazardous precedent, and every individual will join with me in wishing that it may not be necessary to follow in these times. It is in times of faction, when party spirit runs high, that dissatisfaction is most likely to be occasioned by the decisions of the Supreme Court. I do not believe that the Supreme Court or the constitution itself, will ever be able to stand against the decided current of public opinion. It is a very different thing from the temporary opinion of a majority; for a majority acting unjustly and unconstitutionally, under the influence of excitement, a majority though it be, is nothing more than a faction, and it was the object of our constitution to control it. The constitution has laid down the fundamental and immutable laws of justice for our Government, and the majority that constitutes the Government should not violate these. The constitution is made to control the Government; it has no other object; and though the Supreme Court cannot resist public opinion, it may resist a temporary majority, and may change that majority. However high the tempest may blow, individuals may hear the calm and steady voice of the judiciary

warning them of their danger; they will shrink away; they will leave that majority a minority; and that is the security the constitution intended by the judiciary. These are the motives that prevent me from voting for the bill on the table.

It may be asked, do you secure this fixedness and permanency of the judiciary, by rejecting the bill? If you confine them to the present number, or reduce them to six, do you provide that they shall be a permanent, unf fluctuating body? will you not stand on the same footing as before? It will still be in the power of Congress to add to or diminish its numbers. My object is to place it on such a footing, as that there may be no temptation, no necessity to innovate; that its organization may continue permanent, for so long a time, that public opinion may settle on it as the common law of our constitution. By adopting a scheme similar to that proposed by the gentleman from Georgia, alteration may be unnecessary for half a century to come. It is not merely what is written on the parchment, that is to be considered constitution. The composition of the English courts is not fixed by any positive law, yet the English Parliament would as soon think of changing the succession to the throne, as of changing the constitution of the courts at Westminster. It may become so with us, and I wish to put it on such a footing that it may become so.

Does the project of the gentleman from Georgia provide a remedy for the grievances complained of by the Western country? Those evils are, that there has been a great accumulation of business in the courts of the Western country; and this objection is the less insisted on because it is admitted that this accumulation is owing to temporary causes. The most important grievance that is complained of is, that incorrect decisions are given, for want of ability in the local courts; and a want of information as respects the local laws in the Supreme Court.

According to the plan of the Senator from Georgia, the number of the judges of the Supreme Court, and the number and distribution of the district judges, are to remain as at present. I would throw out for consideration, whether the judges of the Supreme Court may not be conveniently reduced to six. The quorum of that court will be four, and the majority of the quorum three.

Instead of associating three district judges to form a Circuit Court, I would propose that the District Courts should exercise an unlimited jurisdiction, as the Circuit Courts at present. Let each circuit judge hold a single court of original and appellate jurisdiction, annually, in each district of his circuit. Where the amount in controversy is less than two thousand dollars, let there be an appeal, as at present, from the District to the Circuit Court, and let the determination of that court be final. When the amount exceeds two thousand dollars, let it be at the option of the party to take

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an appeal either to the Circuit or Supreme Court; but, in either case, let the decision be final. Where causes are brought originally in the Circuit Court, let the appeal be as at present. It seems to me, that this plan is not liable to any serious objections; that it will provide an effectual remedy for the grievances which are complained of; and that it contains as little innovation as any effectual and unobjectionable plan that can be devised.

It will provide for the transaction of business. There is no ground to apprehend that the district judges will find any difficulty in transacting the business of their districts, as at present arranged, for a century to come; and if, by any possibility, the business of a district should accumulate beyond the power of a judge to discharge it, it may be divided. It will likewise render the duties of the Supreme and Circuit Courts less burdensome, and enable the present number of judges to discharge them for an indefinite period of time. Many cases in which appeals are now taken to the Supreme Court, will be finally decided in the Circuit Court. It is plain that the circuit duty will be lessened at least one-half. The judges of the Supreme Court are now tasked to the utmost extent of their powers. As business increases in the natural progress of society and population, it is plain that they will be unable to perform it. Almost the whole year is divided between the circuit and the session of the Supreme Court. The appointment of additional judges will rather add to the difficulty than palliate it; for a numerous court must of course get along with its business more heavily than a limited one. The proposed system will, in some measure, accommodate itself to the exigency of affairs. If the district judge is a competent one, almost all the business will, in the first instance, be carried into that court. If otherwise, much of it will be commenced in the Circuit Court. The original jurisdiction of the Circuit Court will, for some time, answer a valuable purpose, where the district judges are at present incompetent, in consequence of having been appointed to small salaries, and duties comparatively unimportant. If the Supreme Court is burdened with business, and confidence is reposed in the circuit judge, many appeals will be carried from the District Court to him. There is no reason to doubt, that, on the proposed plan, the whole business of the country may be transacted without difficulty, or an increase of judges, to as distant a period as it is necessary for us to look forward.

Complaints are also made, that the district judges are incompetent, and that there is a deficiency of information in the Supreme Court, with respect to local law. The source of the incompetency of the district judges, every one traces to their having been appointed with a view to limited duties, and their salaries being too small to command the services of individuals properly qualified. It is obvious that the only remedy, is to enlarge their salaries and

their jurisdiction. I have no great opinion of the benefits to be derived from the judges travelling into the several States to acquire a knowledge of local law, and communicating their acquisitions to their brethren. There are serious objections to allowing an appeal from a judge to a court of which he is a member. His opinions are seldom weighed with an entirely impartial scrutiny. But, how infinitely is the objection increased when he is supposed to possess exclusive information with respect to the subject on which he has decided. The court will infallibly run into the habit of referring the case to the judge who is supposed to have peculiar qualifications for determining it; and the rest of the members will become careless of understanding it for themselves. No method has been devised for the investigation of a question as to have an able advocate on each side, interested to bring forward every thing that can favor his own view of the subject. You are much more likely to inform the Supreme Court on the subject of local laws, by rendering the district judges able and enlightened, than by sending its members on a circuit into the several States. The district judge should understand the laws of his own State thoroughly. By sound reasoning—by an enlightened opinion, he may inform the Supreme Court—this is the legitimate mode by which a judge, in the first instance, should influence the appellate tribunal. It is to be observed, too, that all the States, with a single exception, have the same general system of common law. When the case arises under the statute of a State, the statute itself will be before the Supreme Court, and, in general, the decisions of the State tribunals giving construction to it. Whatever benefit, however, is to be derived from the information which the judges of the Supreme Court are to acquire by travelling into the States, will be obtained in about an equal degree under either system—that proposed by the amendment of the Senator from Georgia, or by the bill on your table. The only difference will be, that the judges will go into three or four States instead of two or three.

The plan proposed by the amendment will also be free from the objections which have been urged against the system which would give the Supreme Court appellate jurisdiction exclusively, and locate it at the seat of Government. It is said that an appellate judge should not be out of the habit of transacting business at nisi prius. That this is necessary by way of discipline and as a test of his talent—that confined to an appellate court, judges are likely to become indolent—some will rely on the judgment, and obtain a reputation by the aid of the talents of others. If there is some truth in these remarks, they are to be taken with much qualification. It may fairly be taken for granted, that no judge will be appointed to the Supreme bench, whose talents have not been well ascertained. He will have the stimulus, which alone (besides the sense of duty) can operate on any judge—the desire of personal reputation—and not only rep-

utation with the public, but the desire to maintain his weight and consideration with his brethren of the bench. The benefits to be derived from the intellectual discipline of presiding at nisi prius are, in my apprehension, very limited. It is said that a judge, exercising appellate jurisdiction, is likely to become abstracted and impracticable. It is not easy to conceive how this should happen in any injurious degree, when he is daily conversant with the details of business, and the practical operation of human affairs. The nisi prius discipline may render a judge more prompt and acute, and teach him to rely on his own resources. He may be a better judge of men, and more able to detect the perjury of a shuffling witness. But I am not aware that these qualifications will render him more fit to discharge the duties of a judge in the last resort. An Old Bailey solicitor is likely to be prompt, acute, and dextrous, but I should not expect from him a very profound or correct judgment on a difficult or intricate subject. A judge who employs all the intervals from his appellate duties in presiding at nisi prius, must come to the discharge of those duties with a mind exhausted, with habits unsuited to deliberate investigation. Perhaps an appellate judge ought to be, in some degree, abstracted and impracticable—at all events, not so practical and dextrous as to accommodate his rule to what he conceives fitting in every particular case. Under the system proposed by the amendment, the judges of the Supreme Court will discharge a portion of nisi prius duty—as much as can be serviceable by way of discipline, without overburdening them, or giving the peculiar and exclusive character of nisi prius judges.

It is said the judges should not be *shut up at Washington*; that they are likely to have an improper devotion to the power of the Government in whose service they are, and from which they derive their support; that this is to be corrected by the judges residing in the various States, and having intercourse with the people; that, having political functions to discharge, they should be conversant with public opinion, and imbibe the spirit of the times; that this is not only necessary to fit the court for discharging its duties ably and with safety to the rights of the States, but to command that public confidence in the court which is necessary to support it. By the amendment we propose, the judges will, in general, reside within the limits of their circuits, and, consequently, be dispersed over the United States. They will have a wider intercourse with the people than at present, and, consequently, more ample means of ascertaining public opinion. It is difficult to foresee the operation of any new system beforehand. There may be something in the plan we propose, to prevent its working successfully. Yet it seems that it is necessary to do something, and we must adopt what seems least objectionable. The plan proposed by the amendment, seems likely to remedy the inconveniences of the present system, without being liable to the objections

which exist with respect to the system of the bill on your table.

Mr. RANDOLPH addressed the Senate for upwards of an hour in opposition to the bill.

The question was then taken on the motion to recommit, and was decided in the negative, by yeas, and nays,—yeas 8, nays 84.

The bill was then reported to the House, and the amendment made in Committee of the Whole concurred in.

SATURDAY, April 15.

The bill "further to amend the Judicial System of the United States," was read a third time, passed by yeas and nays, and returned to the House for concurrence in the amendments.

YEAS.—Messrs. Barton, Bell, Benton, Chambers, Chandler, Chase, Cobb, Eaton, Edwards, Harrison, Hayne, Hendricks, Holmes, Johnson of Kentucky, Johnston of Louisiana, Kane, King, Lloyd, Marks, Mills, Reed, Rowan, Ruggles, Sanford, Seymour, Smith, Tazewell, Thomas, Van Buren, White, Williams—31.

NAYS.—Messrs. Berrien, Branch, Clayton, Findlay, Harper, Macon, Randolph, Robbins—8.

THURSDAY, April 20.

*Land for the Indiana Wabash and Lake Erie Canal.*

The Senate then proceeded to consider, as in Committee of the Whole, the bill to grant a certain quantity of land to the State of Indiana, for the purpose of aiding said State in opening a canal to connect the waters of the Wabash River with those of Lake Erie.

[This bill grants for this purpose a quantity of land, equal to six sections in width, embracing the land on both sides of, and most contiguous to, the canal, from one end to the other, subject to the disposal of the State Legislature.]

A short debate took place on this bill. It was opposed by Messrs. CHANDLER, HOLMES, COBB, and FINDLAY, as a wild project in attempting to carry a canal through such a wilderness, nor was the length of the canal specified, and all the land which would be improved or rendered valuable by it, would be reserved to the State. Mr. FINDLAY expressed his willingness to assist it by subscribing for stock as they had done for other canals.

The bill was supported and defended by Messrs. HENDRICKS, HARRISON, and JOHNSON, of Kentucky, who urged the practicability and importance of the canal, and the incapacity of the State of Indiana to effect it without the aid of Congress.

The following observations of one of the latter gentlemen, will serve to explain the grounds on which the bill was advocated.

Mr. HENDRICKS, of Indiana, said, it would be unpardonable in him, at this late period of the session, to detain the Senate by a speech of any considerable length. On this subject, however, it is perhaps unnecessary for me, said Mr. HENDRICKS, to give any assurances, for it has not

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been my practice to obtrude myself upon the attention of this body in frequent or long debates. On the bill now before you, it was my intention, had it met the consideration of the Senate at an earlier day, to have said much more than I now shall. I feel myself indebted to the comity of the Senate, for resuming its consideration at this late hour of the session, and of the day, and will endeavor to repay that comity, by closing the discussion on my part in a very short time.

Sir, a moment at a time like this, when the members are starting and preparing to go, may be all-important to a measure. The Illinois Canal bill, which, about three hours ago, was defeated by an equal division of the Senate, would, in all probability, if on its passage at this moment, obtain a different result. One member from Maryland is gone home, one from Delaware is sick, and another, from Kentucky, leaves us in the morning. These, with one or two others believed to be friendly to the cause of internal improvements, being absent, diminish our prospects in the present case.

A report of the Committee on Roads and Canals accompanied this bill. It has been printed and laid on the tables of members almost three months. It has been read, and contains all the information which is most obviously connected with the subject. But, as inquiries have been made, and objections started, I will endeavor to answer them. It is said that the country is yet a wilderness, inhabited by Indians, and that it is idle to talk of improvements of this kind, which belong to advanced periods of the improvement of a country. Gentlemen talk of twenty years to come, of another generation, as time enough for such improvements as these. Suggestions of this kind are serious, inasmuch as they create difficulties in the minds of those who know nothing about our country, and operate unfavorably to the present question. In all other views, they would only show us from the West, how little gentlemen from the East and South know about our country, and could only excite a smile. On this subject, I refer gentlemen to the history of our country. In 1800, the Northwestern Territory, now the States of Ohio, Indiana, and Illinois, contained only a few thousand inhabitants, confined to the Connecticut Reserve, Vincennes, Kaskaskia, and Detroit, and a few settlements on the Ohio. That Territory now sustains a population of perhaps one million and a half; sends twenty members and one delegate to the other House; and, if an apportionment could be based on the present population, it would be entitled to six or eight more. Let me tell the gentleman from Maine, who has made this objection, that the fertile regions of the Western country, as the Indian title becomes extinguished, change instantaneously, as if by magic, from a dense forest to a highly cultivated country; and let me further tell the gentleman, that his own citizens and constituents, from the Penobscot and Kennebec,

aid in producing this state of things. Sir, of all regions of the West which have been settled within the last four-and-twenty years, none has progressed with more rapidity than will this Wabash country. The canals of New York, the navigation of Lake Erie and of the Miami, to Fort Wayne, afford facilities, in arriving at this country, which never, until very recently, had any existence. Heretofore the approaches to that country from the East, were by land, in many instances a distance of a thousand miles; or else by water, from some navigable point on the Ohio, or its tributary streams. The exposures and fatigues of families in this removal well prepared the northern constitution for the diseases of the country, and inflicted, in many instances, innumerable calamities on the unfortunate emigrant. The reputation of the country for health was injured, and emigration discouraged. All this is now removed. The Western country of the Wabash is also better adapted to the northern emigrant than any district heretofore settled west of the State of Ohio. The situation of this district, then, in all respects, justifies the belief, that it will settle with a rapidity heretofore unknown.

Sir, the very fact that the country is unsettled, is the strongest reason for passing this bill. Why? the land is now your own. You have it yet to give, but the moment you put it into market, that ceases to be the case. You sell the best lands for one dollar and twenty-five cents per acre, and not only put it out of your power to aid the State in this way, but you produce this state of things. If ever the State should be able to make this canal, she will have to operate in a highly cultivated country, and have to pay five, ten, and twenty dollars per acre for the land through which it must pass. In this way, by not passing the bill before the lands are put in market, you not only refuse to do the State a positive good, but really inflict a positive injury.

It has also been objected that there has been no survey of the route; no estimates; that there may be various routes for this canal, and on this subject we have no information. Sir, the report just read, gives you, I believe, reasons which ought to be satisfactory on these points. Two years ago, you passed a law authorizing the State of Indiana to survey this route through your public lands, and gave the very liberal donation of land for the bed of the canal, and ninety feet on each side thereof; and you reserved, also, from sale, the sections through which this route might pass. The subject of this survey has been before the Legislature of the State. They refused to appropriate money to make the survey. They were, perhaps, correct in this. For, being destitute of the means of making the canal, it was deemed bad policy to expend money in its location. The location of the canal would only have attracted attention to the public land in that quarter; would have given a nominal and

fictitious value to it, which for many years cannot be realized, without the aid of the General Government in constructing the canal. It would have insured the sale of the lands contiguous, and have created new difficulties for the State whensoever she might determine to engage in the work. The State of Indiana will not authorize the survey at her own expense, unless she has your aid in this, or some other form, to enable her to progress with the work.

There can be but one route for this canal. It must follow the stream from the western termination of the portage. It must keep the valley of the Wabash. This portage connects the river St. Mary's three miles above its junction with the St. Joseph's, with the waters of the Wabash. It is less than seven miles between the points, and so low is the summit level, that small water craft has frequently, in times of high water, passed from the one to the other. It is believed that a feeder of a few miles in length from the St. Joseph's will supply this summit with any quantity of water, or that the St. Mary's may be used for this purpose, by damming it in the vicinity of Fort Wayne. The fact, however, that the waters of the east and the west mingle at that point, proves the summit level to be very inconsiderable. As to the length of this canal, opinions are somewhat different. Some opinions say that a cut across this summit level will be sufficient; others, that the cut must be extended to the Little Wabash, a distance of twenty-five miles; and others, that it must be extended still further. The lowest point named is the mouth of Tippecanoe River. This is believed to be distant from Fort Wayne about one hundred miles. My own opinion is, that the canal should terminate below the mouth of the Mississinaway, and this would require a cut of perhaps fifty miles. Its length, however, is not so great a consideration. It is a matter of principle. Will you give lands for this purpose? If you will, its magnitude, though it should go to the Tippecanoe, ought not to deter you. You cannot doubt of the expediency of the measure, whether you look at the importance of the country contiguous, or the vast and fertile regions with which, and between which, it will open a communication. If the canal be a long one, it will be the more expensive, and the more will we require your aid. If it be a short one, the bill will give us less. As the bill is drawn, the appropriation will be in proportion to the length of the canal.

#### *Executive Powers.*

The Senate then resumed the consideration of the motion submitted by Mr. BRANCH, relative to the extent of the power of the Executive in appointing foreign Ministers.

And the question being on the indefinite postponement of the resolution,

Mr. HARPER, of South Carolina, spoke for an hour in support of the resolution.

He was followed by Mr. LLOYD, in opposition to the resolution.

Mr. TAKEWELL said the question for the consideration of the Senate is, whether the Constitution of the United States confers upon the President that power, which in his message of the 26th of December last, to this body, he asserts to be within his exclusive "constitutional competency."

I concur, entirely, said Mr. T. with the Senator from Maryland, (Mr. CHAMBERS,) in the opinion which he has expressed, that it is necessary to understand distinctly, in the first instance, what is the true nature and precise extent of the power the President has so asserted, before we can properly decide whether this power be within his "constitutional competency" or not. But I differ very widely from that Senator as to the correctness of the rule to which he refers, for the purpose of learning what the true nature and precise extent of his power is.

According to all received opinions upon the subject of interpretation, which have ever come under my observation, the meaning of language is to be sought for, first, in the obvious signification of the word used. If this be certain, the intention of him who used them is fixed and determined, but if doubt still remains, this doubt must be removed, by a reference to their context. And if certainty is not there found, then resort must be had to other words used contemporaneously by the same author, in reference to the same, or even similar subjects. It is by these rules the President must judge of the meaning of our language, used in bills sent to him for his approbation; and by the same rules, therefore, we must judge of the meaning of his language, used in messages sent by him to this body.

Tried by any of these well-approved standards, the true nature and precise extent of the power asserted by the President upon this occasion, is clear and confessed. The "measure" which he deems to be within his constitutional competency, he expressly declares to be that mentioned by him in his message to both Houses of Congress, at the commencement of the present session. In that message this "measure" is pronounced to be, "*the commissioning of Ministers on the part of the United States to attend at the deliberations of the Congress of Panama, and to take part in them.*" So that the obvious signification of the words used to denote the true nature and precise extent of the power asserted by the President, upon this occasion, is, that the authority to appoint and commission such ministers, is within his exclusive constitutional competency; and this, without any limitation or qualification whatever.

If, however, any doubt could yet remain, as to the nature and extent of the power thus claimed, without stint or limit, that doubt must yield to the explanation of the words used by the President, given by himself, in their context. His language is, that "although this measure was deemed to be within the constitu-

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tional competency of the Executive, I have not thought proper to take any step in it, before ascertaining that my opinion of its expediency will concur with that of both branches of the legislature." Hence, it plainly appears, that the power asserted by the President, was a power not then (*viz.* December 26) executed, but remaining yet to be executed—a power which, although deemed to be within his constitutional competency, was one, in the execution of which he had not then (December 26) thought proper to take any step. A power, in the execution of which he needed no aid from the concurring act of the Senate, whom he had consulted, not as to the power, but *as to the expediency* of exerting it in the particular case. So that, if this assertion be correct, the Senate are indebted for the privilege of giving any opinion in relation to the "measure," not to the constitution, but to the gracious good will of the President alone, within whose exclusive "constitutional competency" the power of creating and of consummating this new political relation is deemed by him to reside.

But, sir, some meaning must be annexed to the President's words, and what is the rule of interpretation by which the Senator from Maryland contends we ought to try them, for the purpose of ascertaining their true signification? He admits that the power is asserted in terms general and unqualified; but tells us that an intended limitation and restriction of the terms used may be found elsewhere, if we will but search for it. And where, sir, does he search for this intended limitation? In the context? No. In the contemporaneous exposition given by the President himself? No. But he says, we must take these general and unqualified terms in connection with other language, to be found in other documents which came to us covered by the same envelope that enclosed this message, and to which other documents we are referred by the message itself. That is to say, sir, to learn the true meaning of plain words used by the President upon one occasion, in a confidential message to this body, and in relation to one subject, we must resort to other words, used by the Secretary of State upon another occasion, in letters to foreign Ministers, relating to a different subject! If this rule of interpretation be correct, the Senator from Maryland, so far as I know, is certainly entitled to all the merit of an invention so novel, and, as it seems to me, so singular also.

I do not think, however, that even this newly invented rule of construction will stand the Senator from Maryland in much stead, at least upon this occasion. For, if you refer to these letters of the Secretary of State, which it is proposed to connect with this message, in order to understand the true meaning of the words used in the latter, you will discover that Mr. Clay, in referring to the consent of the Senate, as a preliminary to the appointment of Ministers to Panama, does not intend to inform the foreign Ministers to whom he was writing, what was

the nature and extent of the power which the President *claimed* to be his, but merely to state to them as a fact the mode in which that power would be *employed*, in this particular case. Whereas, in this message, the President refers, not to the power he meant to employ, but to that which he deemed to be within his "constitutional competency," although he did not mean to exert it upon that occasion. The President claims a right, avowing in his claim itself, that he did not intend to exert it at that time, although it was his; while the Secretary refers to the manner in which a supposed existing power would be then employed.

Every one must see, immediately, that it would have been as great an assumption on the part of the Secretary if he had undertaken to communicate to any foreign Minister, the extent of what he deemed to be the rights of the mere abstract authority of the President, which it was not intended to exert, as it is admitted to be on the part of the President, to assert such an authority without limitation or restriction. It is inconceivable by me, then, in what way the statement of Mr. Clay, made to a foreign Minister, as to the manner in which the power of the President would be employed by him, in a particular case, can assist us in discovering what is the true nature and precise extent of a general and unlimited authority, claimed by the President, but which is expressly declared by him not to be intended to be used on that occasion. And yet, this is the sole source from whence the Senator from Maryland has derived his opinion, that the President, by the broad and unqualified terms he has employed in this message, meant to assert nothing more than the right of appointing Ministers to Panama, *during the recess of the Senate.*

And here, Mr. President, I cannot avoid again noticing the unkindness to the President, of those who wish to interpolate in his message these words, "during the recess of the Senate," which are not to be found even in the documents accompanying it. To defend him from the charge of claiming an authority, which it is conceded on all sides that the constitution never conferred upon him, they would not only convict him of the grossest ignorance of his mother tongue, but now seek to fix upon him the imputation of the miserable, puerile, childish vanity, of asserting unnecessarily, and "ex cathedra," to the Senate in session, what would have been his power if they had not been in session! If, sir, I could once bring myself to the belief that such was his real purpose, I would advise my friend from North Carolina (Mr. BRANCH) to withdraw his resolution, and in its stead propose to the Senate to return as an answer to this message, the only proper reply it would, I think, merit, by sending him the contemptuous Spartan IF, engrossed in capital letters, upon the largest skin of parchment which could be found.

But, sir, I stand not here to prosecute philological inquiries, or to adjust with the President

the terms which courtesy and good manners prescribe as proper to be attended to, in his intercourse with the co-ordinate departments of this Government. I have risen to defend the privileges of the Senate, and the rights of the sovereign State whose representative I am, both of which I deem to have been assailed, by the covert assertion of a dangerous power, the exertion of which is insidiously waived, in the very claim wherein the authority is declared to exist. And, therefore, as it has been distinctly conceded on all hands, that the power which I have contended to be asserted, and which I still believe to have been intentionally asserted, by the President, in this message of December 26th, does not belong to him, I will now proceed to examine that, which the Senator from Maryland, and he from Massachusetts, (Mr. MILLA,) admit to be claimed by the President, and which they both strenuously contend, does of right belong to him.

What is that power? It is the very same in kind, although not in degree, with that which they have admitted not to be within the constitutional competency of the Executive. Limiting its exercise to the recess of the Senate, they contend that, during such a recess, the President has the uncontrolled power to send any Ministers, to any nation, or to any people under the sun, at his mere will and pleasure. Yes, sir, that he has authority, the moment we adjourn, to send a Minister to Greece, or to Hayti, if he shall choose to do so. Not only may he do this, but that, during the recess of the Senate, he may send any Minister he thinks proper, to any congress of any nations, or of any people, (whether assembled at Panama, or at Verona, or Vienna,) with which he in his unrestrained discretion may see fit to connect us; and that he may clothe these his Ministers, when so sent, with any powers, functions, or authorities he may choose, even to contract alliances offensive and defensive, or to pledge the faith of the United States, for any purpose whatever.

Such, sir, is the position these Senators take. And how have they supported the assertion of this enormous prerogative, which they claim to appertain to the President as of right? Have they sought support for it in the written precepts of the constitution? No. Do they deduce it from any principle derived from the general theory of our Government, or the genius and spirit of our institutions? No. But they support this extravagant pretension, horribly portentous as it is to the best interests and dearest rights of this people, by a few PRECEDENTS, which their industry has enabled them to pick up, in the obscurity where they lay hid, sparsely scattered here and there in the secret history of our diplomatic intercourse, "*ab urbe condita*." Yes, sir, they find in our archives examples such as our sacred history records of angel visits, "but few and far between," and because they have discovered a *few cases*, in which a power supposed to be somewhat analogous to that for which they contend, has been exercised by *some*

Presidents, under circumstances altogether *new* and *very peculiar*, they think they argue fairly and logically from such premises, when they conclude that, because some former Presidents have exerted some such power, under some special circumstances, that therefore the present and future Presidents may exert, as of right, a similar power, in all cases whatsoever. They contend, that because, during the recess of the Senate, a Consul has been appointed by one President, to supervise the interests of our sailors in the port of some nation with which we had long carried on commerce, *ergo*, during a like recess, all Presidents may of right appoint Ministers to any other nation, with which we have never had connection of any kind, even China, Japan, or the Grand Turk. They contend, that because, during the recess of the Senate, one President, in time of flagrant war, has appointed a Minister to negotiate a peace with a barbarian tribe, *ergo*, during the like recess, all Presidents, in time of peace, may of right appoint Envoys Extraordinary, to recognize the independence of any people, struggling to free themselves from the domination of their former Sovereign, our approved friend. And they contend, that because, during the recess of the Senate, one President, in a time of universal peace, has appointed a Minister to an ancient and acknowledged Sovereign, merely to maintain with him the customary relations of courtesy, amity, and commerce, *ergo*, during the like recess, all Presidents may appoint so many deputies as they think proper, to a Congress, to be composed of they know not whom, or for what purpose assembled.

Such, sir, is the nature and effect of the sole argument which has been urged upon this subject. An argument, the error of which is stamped so strongly and plainly upon its very face, that I would not trespass upon the time of the Senate in answering it, was it not for the awfully important consequences to which it unavoidably leads. As these consequences, however, involve the very existence of this Government, and the liberties of the people, I hope I shall be excused if I detain you longer than perhaps I ought, while I examine in detail the various *cases* to which we have been referred, and upon which alone this argument is made to rest.

Before I do this, Mr. President, I must be permitted to premise some general remarks in which (if they be correct) the Senate will find a satisfactory answer to all these precedents, were they even more numerous, and more strictly applicable, than those to which we have been referred.

And first, sir, I utterly deny the correctness of this doctrine, which seeks to create a new, substantive, and fruitful source of power, in existing or future Presidents, from the past practices of their predecessors. And I deny more strongly, if I may do so, the authority to enlarge the volume of power, issuing from this newly discovered fountain by the process of in-

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duction and reasoning by analogy. Let it be once granted that the practice of one President gives a legitimate authority to his successor, and that this authority may be enlarged by analogies, and it must be obvious to all, that the power granted by the people to the Executive, although made by the constitution but a school-boy's snowball, in a few turns would become a monstrous avalanche, that must one day crush themselves. Under a Government founded upon a written constitution, by which none other than limited power is granted, and in which all powers not granted are expressly reserved; in the nature of things there can be no other legitimate source of authority, than the written constitution itself. Any department of such a government, therefore, which exerts a power that cannot be deduced *directly* from this constitution, is guilty of usurpation.

It is true, that where the language of the constitution in its grants of power is doubtful, the constant practice under it, regularly and invariably pursued, whenever a case has arisen within the scope of the doubtful grant, and in which practice all have acquiesced, and for a long time, is entitled to very high respect; and perhaps I might even go further, and say, ought to be considered as conclusive, to show that such a practice was of right. And why is this? It is because, in a doubtful case, such constant and regular practices, so uniformly and invariably acquiesced in, amount to the highest evidence, to prove the correctness of the original construction of the grant, from which grant the power is *directly* deduced. But where the constitution is not doubtful, or where cases are found of mere occasional departure from the principles on which the constitution itself is founded, although the parchment rolls should reach high as Pelion piled on Ossa, and Olympus upon Pelion, the precedents they may furnish ought not to weigh even as "the dust in the balance."

If this be so, it follows necessarily, that before any case furnished by our archives can be considered as entitled to the slightest respect, as a precedent of rightful power, it must be clearly shown to be in accordance with the principles of our institutions, not contrariant to the expressed precepts of the constitution, and to have been adopted as a rule regularly and invariably observed in all other cases of the same kind, which preceded or followed it. I say regularly and invariably observed: for liberty can have none but negative precedents in its favor. It exists only in the exemption from the oppression and usurpation of power. And as even the successful resistance of attempted usurpation merely dams up the stream, leaving no trace of its intended course but in the dry and vacant channel, which, if unobstructed, it might perhaps have occupied—so the want of precedent, in cases where precedents of power might be found, if it had been supposed to exist, is the highest authority to show that it has never been granted, even where the words of the grant are doubtful, and the power claimed is in

accordance with the principles of our institutions.

Again, sir, let it not be forgotten, that it is not the practice of the Government, but the long and quiet acquiescence of the people, under that practice, which gives a tacit assent to the power exerted, in a doubtful case. It is their tacit assent, to be inferred from such acquiescence, that sanctifies the claims, and approves the construction of the doubtful grant, from which the power asserted is *directly* deduced. Therefore, before any case furnished can be considered as entitled to the slightest respect as a precedent of rightful power, it must be shown to be one of sufficient importance to have attracted general observation, and of sufficient publicity to have been generally known and understood: for none can be supposed to approve that which they never observed, or observing, did not understand.

And this, sir, cuts up the argument of analogy at once, by the roots; for, as nothing can be approved, but that which is observed and understood, to contend that, because the fact of power exerted, has been understood, and acquiesced in, that therefore all the inductions which even fair analogy may deduce from this fact are also approved, would be as absurd as to contend that all had approved of the Newtonian theory, who had ever seen a pear fall. All men were capable of noticing and understanding this fact, and most men would see the first and obvious consequences resulting from it; yet, none but a Newton could have traced their analogies, and by the aid of induction, have inferred from thence the law of the Universe. So, too, when a fact of power exerted is shown to have occurred, under circumstances inviting general observation, and permitting general knowledge of its existence, if it has been acquiesced in quietly, it may be fair to argue that the power exerted in that particular case, has been tacitly approved; and so conclude that the same power may be properly again exerted in the same mode, and under the same circumstances. But the inference must go no further; because nothing beyond this can be then known, is then generally understood, or can be fairly supposed to be approved.

Whosoever, then, seeks to derive power from, or to sustain it by precedent merely, must show a precedent agreeing, not in some, but in all essentials, with the case before him. There must be no abstractions in the argument. Principles must not be inferred from one case, by the process of induction, and enlarged and extended by the process of analogy to other cases of a like kind, from whence again new principles are to be deduced, and these again enlarged by new analogies. This may be permitted in physics, because there experiment may be perpetually resorted to, in order to test the truth of the reasoning. But it must not be endured in the politics of a free country, where a written constitution exists, the sole object of which is to prevent such experiments from being made.



This, sir, is a Republican Government, the form of which was dictated by suspicion, and guarded by jealousy, especially of Executive power. To such a Government it is obvious, no more power would be granted, than what was believed to be necessary to attain the objects which its authors, the people, had in view; and that the powers necessary to this end would be checked and balanced, by distributing them between the different departments, each independent of the other, and placed as a sentinel over its acts. That concurrence of opinion between different departments would be requisite in all matters involving great interests; and that the high destinies of the people would never be committed to the unrestrained discretion of any single man. These principles are dictated by the spirit of all our institutions, and exhibited in every part of our constitution itself. Such principles, however, cannot be reconciled with this enormous prerogative claimed for the President, although its exercise be limited only to the period of the recess of the Senate. For it must not escape notice, that, according to this new doctrine, the President is not *compelled to act* while the Senate is in session, but may forbear to do so, until the recess, without the least disparagement of his asserted power. The office of a foreign Minister, according to this argument, is one created by the public law; is recognized merely, by the constitution, as an office of potential existence, to be filled only, when an exigency arises requiring it to be called into action, and of the occurrence of such an exigency the President is supposed to be the sole judge. So that, if the Executive will but suspend the declaration of its judgment until Congress adjourns, immediately thereupon he may pronounce a vacancy to have happened in any office appertaining to our foreign intercourse, and proceed to fill up the vacancy so produced, as one occurring during the recess of the Senate. All *original* appointments belonging to our foreign relations are thus placed within the absolute power of the President, by this argument; and as no one has or can deny to him the right of filling up vacancies, actually happening in such offices, during the recess of the Senate, after they have been once filled, the whole power over the foreign relations of the United States is thus virtually transferred to the Executive, without check or limitation. A prerogative so vast and magnificent, which would endow the chief magistrate of a free people with plenary regal power, is not in accordance with the jealous spirit of our Republican institutions.

It is, moreover, sir, directly contrary to the written and expressed precepts of the constitution. To secure the liberties of the people, the constitution created three co-ordinate departments of Government—the Legislative, Executive, and Judiciary, each independent of the other; and it distributed between them all the powers it meant to convey. Beginning with the Legislative department, it provides, in the first

section of the first article, that all the Legislative power therein granted should be vested in a Congress, to consist of two bodies, the House of Representatives and Senate. Pursuing this division it proceeds, in the three first paragraphs of the second section of this article, to prescribe the manner in which the House of Representatives shall be chosen. And, having thus provided a full and complete House, it then proceeds, in the fourth paragraph, to declare the mode in which *vacancies happening* therein shall be filled, viz.: “when vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.”

Here the term “vacancy” first occurs in the constitution; and here it is most manifest that it must refer to an office once filled, but afterwards becoming vacant, by some occurrence “happening” to the incumbent, during the term for which he had been chosen. And that the only authority here given to the State Executive is, to employ the prescribed means “to fill” this appointment, which, having been once supplied, had so become empty. This construction, called for by the plain signification of the words of the constitution, has received the sanction of this whole people, from the beginning of the Government to this hour; and no example exists, in which the Executive of a State has ever ventured to issue a writ of election, except to supply vacancies in the House of Representatives, produced by some event “happening” after an original election had been made, and during the term for which such election was made. The meaning of the words, as used in this part of the instrument, is therefore fixed and determined.

The same signification is again given to the same words where they are next found. Having directed the manner of creating the House of Representatives, and preserving it complete, throughout its constitutional term of two years, in the second section of the first article; the constitution, in the third section of the same article, takes up the other branch of the legislature, the Senate. In the first paragraph of the third section, it provides how, and by whom, the members of this body shall be at first chosen; and having so provided a full and complete Senate, it proceeds, in the second paragraph, to declare the mode in which future “vacancies” in that body also shall be filled. Its language is, “if vacancies happen, by resignation, or otherwise, during the recess of the legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.”

Now here it is more clear, if possible, than in the former case, that the “vacancy” which the State Executive is authorized to supply, by a temporary appointment, is not an original vacancy, (if I may so speak,) but a “vacancy” occurring in the Senate, after the appointment of a Senator has been once made by the legis-

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lature; and which vacancy has "happened" by resignation or otherwise, not only during the term for which the first senator was appointed, but during the recess of the legislature of any State. And if any confirmation of the correctness of this construction could be required, it would readily be found in the decision of this Senate itself, in the case of Mr. Lanman, the Senator from Connecticut, made in March, 1825. The circumstances of that case are of so recent date, and the decision itself being made by the members now here present, it cannot be necessary to state it more particularly. The meaning of the terms used in the constitution being thus fixed and determined, in the two instances where they first occur, we ought not to doubt that they were employed in the same sense where we shall next find them.

Having disposed of the Legislative department in its first article, the constitution proceeds, in the second, to provide for the Executive, to prescribe the mode of its appointment, and to endow it with its appropriate powers. In describing these powers, the subject of appointment to offices constitutes the matter of the second paragraph of the second section of this article; and this power is therein delineated by these words: "He shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law."

Had the constitution stopped here, none could doubt that the power of appointment, even of the lowest officer under the Government, could not have been rightfully exercised by the President alone, at any time whatever, unless in pursuance of some law providing that this might be done. In all other cases, this power is expressly granted to him in conjunction with the Senate, without whose advice and consent it could not be rightfully exercised. But the constitution does not stop here. Having, as in the former cases, prescribed the general mode in which all *original* appointments were to be made, it proceeds, in the next paragraph of the same section, to provide for "vacancies." Its language is, "the President shall have power to *fill up* all vacancies that may *happen* during the recess of the Senate, by granting commissions, which shall expire at the end of their next session." And it is under this clause that gentlemen derive the prerogative, which they claim for the President, of calling into existence, during the recess of the Senate, new offices, never before filled, and of filling them at his pleasure.

According to their theory, the office, like original sin, has existed throughout all time. Aware, however, of the difficulties to which this proposition would lead, when it should be replied, that, if the office did so exist, it must

always have been vacant; and of course that the vacancy did not "happen during the recess of the Senate," they have resorted to the distinction between potential and actual existence, making vacancy apply only to the latter state — of the occurrence of which the President is, in their opinion, the sole judge. To this subtle argument, I answer, first, that the same words here used have been shown to be employed in two preceding clauses of the constitution, in reference to the same subject of vacancies. That their signification has been there fixed beyond all doubt; and has been shown to refer not to potential but to actual office, in which, being once filled, a vacancy has happened, by reason of some occurrence to the former incumbent. And that the same interpretation must therefore be given to the same words when they occur here for the third time in the same instrument.

My opinion has ever been, Mr. President, that, as the constitution has expressly declared "the Executive power shall be vested in a President," this power of appointment to office would have necessarily belonged to him, as an incident of the general Executive authority with which he was thus clothed, but for the other provision, to which I have already referred, by which the advice and consent of the Senate is made necessary to give effect to this power. Thinking thus, I have ever regarded this clause, which authorizes the President to nominate, and, by and with the advice and consent of the Senate, to appoint to office, not as a donation, but as a limitation of the power of the Executive. But for this clause, the whole power would have been his; and this as well during the session, as during the recess of the Senate. That jealousy and dread of Executive power, however, which is manifested in so many other parts of this instrument, induced the framers of the constitution to check and limit it, by requiring the concurrence of the Senate in its exercise, *in all cases*. Foreseeing, then, that even after the appointments had been originally made, in the mode prescribed, that vacancies might nevertheless occur in the offices which had been so supplied, and that the vacancies might happen during the recess of the Senate, the framers of the constitution made an exception to the general rule they had so previously declared; and by the clause, before referred to, gave to the President the full power to fill up all *such* vacancies. In doing this, they merely gave to him a power similar to that which they had before given to the Executive of each of the States, in relation to the like vacancies occurring in this body, and no more. The construction now contended for, however, would make the exception even larger than the rule itself; and not only so, but, by the force of the proviso, would render nugatory the rule, to which it is an exception merely, and which rule was intended to limit and restrain a power of the President, that without it would be unqualified.

If, sir, I have been successful in the attempts I have thus made, to show that the power claimed for the President upon this occasion is opposed to the principles of our institutions, and forbidden by the precepts and limitations of the constitution, it would not be necessary, probably, to notice the *cases*, in which such unauthorized power is supposed to have been exerted. But, sir, the name and fame of the wise and good men, under whose administration these supposed acts of lawless usurpation are said to have occurred, is dear to this people. Their well-earned reputation is public property of great and inestimable value, and of no one particle of which am I willing to be deprived, until the right to commit the waste is clearly made out. I ask your indulgence, and that of the Senate, a while longer, therefore, while I shall endeavor to prove, that neither Washington, or Jefferson, or Madison, have ever claimed or used any such power, as that which the existing President asserts to be within his "constitutional competency," and which the *cases* referred to are supposed to sanction.

The first of these cases is that of John Paul Jones, who, according to the document read by the Senator from Massachusetts, was appointed by President Washington, in May, 1792, during the recess of the Senate, as a Minister to Algiers, to negotiate a treaty of peace and of commerce with that power.

This is the first case which industry has been enabled to discover, of any supposed original appointment, made by the President, without the advice of the Senate. And as it seems in some of its features to bear resemblance to other cases which afterwards appear, I shall examine it with more minuteness than I think it is entitled to, in order to relieve myself from the necessity of again touching the same topic.

The first remark I shall make upon it is, that it occurred in May, 1792, more than three years after this constitution had been in full operation. Now, if the ideas which Senators have announced during this debate be correct, the moment this constitution went into operation, on the 4th of March, 1789, it called into potential existence every office which is therein recognized. The very creation of this new Government, terminated the official existence of every foreign diplomatic functionary of the United States, and so produced the necessity of re-establishing all the foreign relations which it had been desirable to create. The whole field of vacant offices was thus thrown open to President Washington; and a policy which, in many instances, must have been dictated by almost necessity, required of him to fill up these potential vacancies. But yet this great and good man, although placed in such circumstances, never ventured to make a single original appointment, of any kind, without the advice and consent of the Senate. Here then is not one, but a body of precedents, occurring continuously throughout more than three years of time, during almost every hour of which,

occasion not only existed, but invited to exercise the power which is now asserted, and in no one instance was it claimed or used. This, sir, is not only strong proof that both Washington and the wise counsellors by whom he was then surrounded, believed that the power now claimed had not been granted; but ought to have induced those who rely upon this case of Commodore Jones to have examined it more attentively, before they brought it here as evidence to show the change in such an opinion.

The next remark I shall make upon it is, that even according to the representation given of it, it was the case of an agent sent to a barbarian people, who were not then, and have never since been recognized, as forming any component part of the family of civilized nations. Let me not be told, that the constitutional power of the President is the same, whether exerted in reference to a savage or a civilized nation. We all know that this is not so. No appointment of a minister who has ever been employed to negotiate for peace, or for any thing else, with any Indian tribe, whether dwelling within or without our territory, whether Osage or Seminole, has ever been laid before the Senate for their consent. They are all considered as agents of the President, and not public ministers of the people; and all our intercourse with barbarians must, of necessity, present anomalies, from which no principles can be inferred. I will not go into reasoning to show why this must and ought to be so, although it would be easy to show it. I merely state the fact, which is conclusive to prove that the case of a mission to Algiers or to the Choctaws, can never be a precedent to justify a mission to Panama.

The next remark I shall make upon this case is, that when it occurred, flagrant war existed between Algiers and the United States; and war, all know, justified, by the very necessities it creates, the exertion of powers that ought not to be endured in peace. He who would infer the principles of peace from the precedents of war, reasons falsely. He might as well deduce precepts of morality from the practices of vice, or seek to learn from the atheist the doctrines of Christianity.

And here, Mr. President, let me develop more fully an idea I suggested upon a former occasion, and upon which the Senator from Maryland has made some remarks. I then said, and I repeat it, that, war existing, the President of the United States is authorized by the constitution to send a Minister to negotiate for peace, not under his general power of appointment, but under his special authority to direct the operations of the existing war. I prove it thus: Peace is the sole legitimate object of all war. To attain this desirable end, the moment war exists, every man, woman, and child, of the one belligerent, is made the enemy of every man, woman, and child, of the other; each at liberty to do the other all the harm in its power, in

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order to constrain it to sue for peace. The President of the United States is, by the constitution, made the commander in chief of their army and navy: and in that character is authorized, nay bound, to direct the military force of the country in time of war, so as to accomplish the great object of war, which is peace, in the most speedy and effectual manner his discretion may suggest. And that which he may do in person, if not forbidden by law, he may do by his Minister or agent. Now, sir, can I be wrong when I conclude from such premises, that he who may negotiate for peace by the roar of artillery, by the conflagration of cities, by the desolation of a country, by the wailings of widows, the shrieks of orphans, and the groans of dying men—that he who may negotiate for a peace by blood and carnage, may do so with pen, ink, and paper, also?

The Senator from Maryland tells us, however, and refers to Vattel as his authority, that the commander of an army cannot conclude a peace; that the power of concluding peace is a high attribute of sovereignty, which can be exercised by none other than those to whom this sovereign right belongs. No one doubts this. I have never contended that the commander of an army could, *as such*, even negotiate for a peace. But I have contended that the Chief Executive Magistrate of the United States, created by the constitution the commander and director of all their military and naval force, may depute either his commanding General, or Admiral, or anybody else, to negotiate for a peace. Mark, sir, I say to negotiate for a peace, and do not say to conclude a peace. Should the President depute his General to do this, the negotiation will be conducted by such commander, not in virtue of the powers incident to him as a commander, but in pursuance of the authority delegated to him as a Minister or agent. Should such negotiation eventuate in a treaty, the treaty will not be obligatory until it has received the consent of those to whom this portion of the sovereign authority belongs. Nor will the peace be concluded by it until the ratifications of the treaty, so approved, have been interchanged by the high contracting sovereignties who are parties to it.

Then, as the United States and Algiers were at war, when this appointment of John Paul Jones as minister to the latter, to treat of peace, took place, President Washington had the clear right, under the constitution, to make such appointment. But the Senator from Massachusetts here remarks, that this appointment constituted Commodore Jones a Minister to treat not only of peace but of commerce also. And, as commerce has nothing to do with war, he asks how this can be justified; except by referring it to the power of appointment, to be exercised by the President, during the recess of the Senate? This reminds me of a question which used to be mooted in the schools, whether, according to the theory of the British law, which does not acknowledge a moment of interregnum,

Charles the First was beheaded in his own reign, or in that of his successor. When this question was once discussed, a gentleman present remarked that, as this event must have occurred either during the one epoch or the other, if it ever did occur, and as great doubts seemed to exist whether either proposition was true, a preliminary question ought to be settled, viz., was King Charles the First ever beheaded? So too, here, before we inquire as to the functions with which the Minister might properly be charged, we had better previously settle the right of the President to send him: for in deciding the one question, we must necessarily determine the other.

If the Senator from Massachusetts will condescend (and his inquiries seem to do so) that the existence of war justifies the President, during the recess of the Senate, to despatch a minister to treat of peace; then, as peace must be concluded before any negotiation concerning commerce could commence—and as, before peace could be concluded, a treaty must have been ratified, by and with the advice and consent of the Senate, which advice and consent necessarily presupposes their approbation of the appointment of the Minister who negotiated the treaty—the conclusion cannot be avoided, that the appointment of the Minister, as a Minister to treat of commerce, was not made without, but must have been made with, the approbation of the Senate. If gentlemen will deal in abstractions, and seek to puzzle us by such subtleties of distinction, I beg of them to recollect, that, although the authority to treat of commerce may have been inscribed on the same parchment whereon was written the authority to treat of peace; yet, in the nature of things, the former appointment must have been (to use their own phrase) a mere potential appointment, having neither salary nor duty attached to it, until it was approved by the Senate, in their consent to the latter, given by their approbation of a treaty of peace; that, until this assent was had, and peace actually concluded, the authority to treat of commerce was a mere contingent instruction, and created no office; and that, before it could become an office, the nomination which would make it such, must have received the advice and consent of the Senate; without which, no original appointment, except to treat of peace, ever has been made or ever can constitutionally be made.

If I be right, Mr. President, in the view which I have thus taken of this case, it results that President Washington would have had the clear right to make the appointment of John Paul Jones, at the time, and under the circumstances existing, when he is supposed to have done so; and that case therefore constitutes no precedent to support the high prerogative claimed by President Adams now. But, sir, understanding the character of President Washington, as I think I do, foreseeing the probable consequences (which must have been seen by him also) that may result from ever sending a Minister to any barbarian people, who scorn to acknowledge themselves bound by the wise provisions of the pub-

lic law; and finding the strongest evidence of his opinion, as to his constitutional authority in relation to original appointments, in his absolute abstinence from making any such, during the recess of the Senate, throughout the whole of his administration, except in this single instance—when this case of John Paul Jones was first exhibited, I was induced by these considerations, to suspect very strongly, that there was some mistake about it; and therefore have looked into its facts with more solicitude than I should otherwise have felt. The result of this research has confirmed my suspicions. *John Paul Jones never was appointed a minister to Algiers for any purpose.* Nor did President Washington take a single step, in reference to the new relation which he wished to establish with that power, that was not *previously advised and approved by the Senate.*

The history of the transaction, [the appointment of John Paul Jones,] as it stands recorded on the secret journals of the Senate, since made public, and now to be found in the 10th volume of Wait's state papers, pages 254, et seq. is this: it was the custom of President Washington, (would to God, sir, it was the custom of the present President also!) whenever any new case of importance arose, in which it was necessary for him to act, to consult with the Senate, as his sworn constitutional advisers, and to ask their advice as to the course which he ought to adopt. In pursuance of this custom, when he saw that war existed with Algiers; that many of our citizens had been made captives, and were then held in bondage by that power; and that our then defenceless commerce was daily exposed to injury while this war continued; President Washington sent a message to the Senate, stating to them these facts, informing them that a prospect then appeared of making a peace, and communicating the terms upon which he believed this desirable object might be accomplished. In this message he asked the advice of the Senate, whether he should enter into negotiation with Algiers for this object or not; and, if so, what ought to be the terms upon which the peace ought to be made. In reply to this message, the Senate, on the 8th of May, 1792, advised him to enter into the proposed negotiation, and to conclude the peace if he could, upon the terms proposed. And, to enable the accomplishment of this object, an act was passed by Congress on the same day, appropriating fifty thousand dollars; and the celebrated Paul Jones, (who was then in Europe,) was selected by the President, as the agent most proper to carry these views into effect, and commissioned in June of the same year.

At the time this transaction occurred, some reasons existed to apprehend, that, if the plan of the United States was known, some European power would endeavor to embarrass its execution, and defeat its object. It was therefore kept a profound secret. Mr. Jefferson, the then Secretary of State, in the instructions intended for Commodore Jones, uses this remarkable lan-

guage:—"Supposing that there exists a disposition to thwart our negotiations with the Algerines, and that this would be very practicable, we have thought it advisable that the knowledge of this appointment should rest with the President, Mr. Pinckney, and myself; for which reason you will perceive that the commissions are all in *my own handwriting*; for the same reason, entire *secrecy* is recommended to you; and that you so cover from the public your departure and destination, as that they may not be conjectured or noticed." Now the idea of a *secret minister* was one much too absurd ever to have entered such a head as that of either Washington or Jefferson. Jones was never, therefore, appointed a "public minister," but a mere secret agent of the President; and is expressly styled in the instructions intended for him a "commissioner." He never acted under this appointment, however, but died soon after it was made. Upon his death, Mr. Barclay was appointed to the same situation, and with the same instructions. He too died "*re infectis*;" and then Mr. Humphries, our Minister Plenipotentiary resident at Madrid, was directed to perform this duty, which he accordingly accomplished.

Such, sir, is the history of the case of John Paul Jones, who was *secretly* deputed by the President to execute a measure previously *advised by the Senate*, and who never accepted or acted under this appointment, as a secret agent to a barbarian tribe, the object of which was to terminate a dreadful war, then raging. If such a case can be made to support the enormous prerogative now asserted by, and claimed for the Executive, my faculties are much too obtuse to enable me to discern the mode in which this can be done.

The next case to which we have been referred is that of Messrs. Monroe and Pinkney, in 1806. And here let it be remarked by the Senate, that no other case of any original appointment of a minister to any foreign state, made during the recess of the Senate, except that of John Paul Jones, has been referred to as occurring throughout the whole administration of President Washington; that no case of any such appointment, made throughout the whole administration of his successor, President Adams, has been produced; and that no such case has been supposed to exist during the first five years of the administration of his successor, President Jefferson; seventeen successive years from the creation of this Government had then passed by, during each of which, frequent occasions must have existed for the exercise of the power now asserted by the President; and yet no single case can be found of any claim being preferred to, or any exertions of such a power; such forbearance makes a body of evidence to show that no such power was believed to exist, too strong, I think, to be resisted. But let us see if even this case be an anomaly, or the commencement of a new practice.

The Senator from Maryland produces extracts

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from two commissions bearing even date in May, 1806, during the recess of the Senate; and states that he has been informed at the State Department, that these appointments were then made. One of these commissions constituted Mr. Pinkney our minister resident at the Court of St. James; and the other appoints that gentleman and Mr. Monroe Envoys Extraordinary, to negotiate a treaty with that court. Now, sir, as to the first of these commissions, it shows upon its face that it constituted Mr. Pinkney the successor of Mr. Monroe. This minister having asked his recall, and his wish being granted by the President, a vacancy so happened in this office then actually pre-existing, and once supplied with an incumbent. And this vacancy occurring during the recess of the Senate, no one can doubt that the President had then the clear right, under the constitution, to fill up such a vacancy as he did.

As to the other commission, the Senator from Maryland has been misinformed at the Department of State; and the mistake in that department has most probably been produced, in this and in many other cases, by confounding the date of the appointment with the date of the commission. A reference to the journals of the Senate will show, that the nomination of Messrs. Monroe and Pinkney, as Envoys Extraordinary, to negotiate a treaty with Great Britain, was regularly made by President Jefferson to the Senate, on the 19th day of April, 1806, and their appointment regularly advised and consented to by that body on the 21st day of the same month. So that this case, too, is nothing more than an example of the regular exercise by the President, of a clear right, placed within his competency by the constitution itself.

The next case to which we have been referred is that of Mr. Short, who was appointed by President Jefferson, Minister to St. Petersburg, during the recess of the Senate, in 1808, nineteen years after this Government had been in operation, during all which time no such power had ever been before claimed or exercised.

The facts of this case are as follow: Under the old Confederation, Mr. Dana had been appointed by the old Congress a minister to this court, in 1780, but was never received or accredited there. In 1808, "the Emperor of Russia having on several occasions indicated sentiments particularly friendly to the United States, and having expressed a wish through different channels, that a diplomatic intercourse should be established between the two countries," President Jefferson believing, "in the then *extraordinary* state of the world, and under the constant possibility of *sudden* negotiations for peace, that the friendly dispositions of such a power might be advantageously cherished by a mission which should manifest our willingness to meet his good will," appointed Mr. Short, during the recess of the Senate, as Minister to Russia. Such is the account given of this appointment by the President himself, in his message of the 24th February, 1809, to the Senate. Notwithstand-

ing the extraordinary emergency which was then said to exist, however, and which alone, as has been stated, was relied upon by President Jefferson, to excuse for the exertion of this then unprecedented exercise of power, the Senate, on the 27th of February, *rejected the nomination by a unanimous vote.*

The Senator from Massachusetts was aware of this, and seeks to obviate the conclusion to which it necessarily and directly leads, by the suggestion, that the rejection proceeded from the opinion entertained by the Senate, as to the mere *inexpediency* of the mission. The facts, however, do not support such a suggestion: for, although a resolution had been previously offered by one of the Senators, expressive of such an opinion, this resolution was withdrawn by the mover, and the vote of the Senate was upon the naked nomination contained in the message to which I have just referred. While, therefore, the case may show the opinion of Mr. Jefferson, that, in an extraordinary emergency, the President may make an appointment of a Minister, during the recess of the Senate, to an ancient sovereign, to whom the United States had previously sent one Minister, it shows nothing more. And in showing this as the opinion of President Jefferson, it also shows the positive and unanimous decision of the Senate, that no such power was within the constitutional competency of the Executive, even in the case supposed. What bearing, then, this case can have upon the present question, I own I cannot conceive.

This decision of the Senate seems to have settled the question, for a long time at least: for to no other case of Ministers appointed during the recess of the Senate have we been referred, until that of Messieurs Adams, Gallatin, and Bayard, in 1818, twenty-four years after the commencement of this Government. These Ministers were then appointed by President Madison, to negotiate treaties of peace and of commerce with Great Britain, and a treaty of commerce with Russia also. Now, sir, so far as this appointment relates to Great Britain, I believe I have already shewn, while examining the case of John Paul Jones, that the President was authorized to make it; because flagrant war then existed between that power and the United States, the object of which war it was the duty of the President to attain as speedily and effectually as possible, by negotiating for a peace, to be subject, when made, to the consent and approbation of the Senate. And so far as this appointment related to Russia, it must be recollected by the Senate, that Mr. Adams, one of the three Ministers then appointed, had been previously and regularly commissioned, by and with the advice and consent of the Senate, as Minister Plenipotentiary to that power; and it was, therefore, within the clear constitutional competency of the President, to have instructed this Minister to negotiate a treaty of commerce with Russia, if he had thought proper so to do, without

consulting any other department of this Government upon that subject; so that the whole case resolves itself at last into this question: Was it within the power of the President to appoint two Ministers, whom he had the authority to send to Russia for one purpose, to co-operate, while they were at St. Petersburg, with a third, already previously and properly there, for the attainment of another object, the attainment of which object was within the clear constitutional competency of the President? Gentlemen must be more astute than I believe man can be, if they can make more of this case than what I have stated; and, if not, they will find it difficult to bend it to suit their purpose upon this occasion.

But suppose it was a case even stronger than I have shown it to be: it is a solitary case, the like of which had then for the first time occurred, and has never since appeared. It cannot, properly, therefore, be a sufficient foundation for the vast prerogative asserted by the President upon this occasion. And here, Mr. President, it must not escape observation, that when this case was subsequently submitted to the Senate for its approbation, although it was such as I have represented it to be, yet the immediate predecessor of the Senator from Massachusetts, who has now relied upon it as a precedent, submitted a string of resolutions to the Senate, the expressed objects of which were to deny the power of the President to make such an appointment, and to protest against the exercise of such a power, even in such a case. These resolutions, it is true, were postponed from time to time, and do not appear ever to have been acted upon definitively by the Senate; but they remain upon our Journals as a perpetual memorial to disprove the opinion of general acquiescence in a practice well known and long pursued; to support which opinion and its supposed consequences, this case has been referred to.

I have now gone through all the cases of Ministers said to have been appointed by any President during the recess of the Senate, to which we have been referred. In some of these cases I have shown, that the facts had been misconceived; in others, that the power exerted, although, under circumstances very different from what now exist, was met by a decided negation of its constitutional exercise, even in such cases; and that from none can any principle be extracted to justify the assumption of authority now contended to be within the "constitutional competency" of the Executive. The remaining cases I shall speedily despatch.

The first of these presents a group, said to consist of eighteen Consuls, who are supposed to have been appointed, during the recess of the Senate, by different Presidents, at different periods. No names have been stated, and, therefore, I have not been supplied with the necessary information to enable me to trace these cases to their proper sources. I am strong-

ly inclined to think, however, that a similar mistake has very probably been committed as to the appointments of these Consuls, which I have shown to have occurred in the case of Messrs. Monroe and Pinkney. The time of the appointment has been erroneously taken from the date of the Commission merely, and not from that of the Senate's act. But, be this as it may, they are all cases of mere Consuls—officers who draw no single cent from the Treasury, nor are authorized to pledge or commit the United States in any way whatsoever—officers of so little importance, that few, except the special friends of the incumbents, ever know of their actual existence even; and, therefore, too insignificant ever to have attracted general observation.

The same remark will also apply to the last case to which we have been referred, that of Mr. Sumter, who was appointed Secretary of Legation by President Jefferson, in 1801. To this I will also add, that, from the beginning of this Government, and even under the old Confederation, this place of Secretary to a mission had always existed, and been annexed to every mission ever instituted, as an incident as necessary to the legation as its cipher or paper. The officer was not called at first a Secretary of Legation, but merely a Secretary of the Minister, and was usually appointed by the Minister himself, although I know well in one case he was appointed immediately by President Washington. When President Jefferson came into power, regarding this appointment as one of more consequence than it had ever before been considered, he took the power of making it into his own hands, and appointed Mr. Sumter as the private Secretary of the Minister to France, "to act as Secretary of Legation." Having thus made the appointment during the recess of the Senate, he, at the next session of that body, submitted it of course to them for their advice and consent. And thus it occurs that this mere appendage of the mission, came to be considered as an office at all.

These, sir, are all the cases which are supposed to exist, that have been even said to bear any affinity to that which is now under consideration. In examining them I have already shown that not one justifies the assertion made, that the President, in time of peace, during the recess of the Senate, can of right make any original appointment whatsoever, even of a Minister to an ancient nation, to which no Minister had before been sent. But even if this were so, it surely does not follow, that he might therefore appoint Ministers to a Congress of nations, such as that assembled at Panama. And here, sir, I differ "*toto orlo*," from the Senator from Massachusetts, who has affirmed that there is no difference between sending a Minister to a sovereign, and to a Congress of sovereignties assembled by their Ministers.

And here, Mr. President, let me recall the attention of the Senate to an argument which I used upon another occasion, and to which nei-



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ther the Senator from Maryland, nor he from Massachusetts, have, I think, given any satisfactory reply. I then stated, that before the United States could be authorized to intrude any thing appertaining to them within the territory of a foreign State, whether at Panama or elsewhere, and whether that thing was a bale of cotton or a Minister, the authority to do so must be derived from the previous assent of the foreign power to which such place belonged. That their municipal authority could not communicate any such right to the United States, because all municipal authority must, of necessity, be territorial; its exercise was limited to the boundaries of the sovereignty from whence it proceeded, and it could not run within the territories of a foreign State, without the consent of such foreign State, previously had. That, although this assent might be inferred, as to all acts customarily practised and done by nations, in their usual intercourse with each other, under the international law, which derived its obligation from the comity and customs of States; yet, that such assent could not be inferred as to any unusual act, unknown to that law; but must be sought for only in special compacts or conventions existing between the parties. That, therefore, the sending a Minister to a Congress of States, assembled for special purposes, such as this at Panama, which was an assemblage unknown to the general, customary law of nations, was an act that could not be justified or sanctioned by this law; and, if permissible at all, the right could only be claimed, under some previous pact, authorizing it to be done: for, that, if the United States had the right to send Ministers to this Congress, and could derive it from the general customary law of nations, as the provisions of that law were not peculiar to the United States, but extended equally to every other civilized nation under the sun, the right of every other such nation was equal to our own; and, therefore, every European sovereign might do the same act. As this, however, was an absurdity, for which, as I then supposed, none would contend, it must be conceded, that our right to send Ministers to this Congress, could only be traced to some previous pact, under which, alone, it might properly be exercised.

Arrived at this conclusion, I then contended, that there was a pact existing in this case, which, when properly ratified and concluded, would give to the United States the right, and impose upon them the duty, of sending Ministers to this Congress; and which, at the same time, would give and impose correlative duties and rights to and upon the States there to be assembled, authorizing them to expect, and binding them to receive, such Ministers. That this pact existed in the written invitations given and accepted upon this occasion, which if duly sanctioned would be as obligatory upon the faith of the parties giving and accepting, as though this pact was sculptured on marble, engraved on brass, or evidenced by all the wax

and engrossed parchment rolls in the world. But, that before this pact could be duly sanctioned, it must, according to the requirements of our constitution, have been advised and consented to by two-thirds of the Senate; without which assent it could impose no obligation upon, and, therefore, give no right to us. As illustrative of this, I then referred to the treaties and conventions already concluded between the several Southern American nations, creating and providing for this Congress at Panama; and I might have referred to all the cases now produced by the Senator from Massachusetts, and to the history of every other assemblage of States, by their Ministers, which ever yet convened, either in the ancient or modern world.

If this be so; if a previous solemn pact be necessary, to authorize any State to send a Minister to meet those of other States, assembled at a Congress, (by which other Ministers, of course, so sent cannot be accredited,) and if such pact cannot be concluded without the advice and consent of two-thirds of the Senate, whence is it, I beg to be informed, that the President, can derive the right of sending Ministers to Panama during the recess of this Senate? Gentlemen, surely, must perceive, that, in asserting such a power for the President, they are contending in effect, if not in words, that, during the recess of the Senate, the President may, of right, not only negotiate for, but conclude and execute a treaty, whereby new rights and obligations are created; a power much greater than even that vast prerogative with which they are disposed to clothe the Executive, in the matter of appointment to office; a power which at once authorizes the President to create and to consummate whatever political relations he may think proper to establish—nay, to make a supreme law by his mere "*fiat*."

I have here done, sir, with the merits of this question. In discussing it, I have endeavored to establish these three great propositions: First, that the power claimed by the President, according to the natural signification of the terms he has employed to communicate his claim, and according to the explanation given of these terms by himself, not only in their context, but in other cotemporaneous communications made to the Senate, was a broad, strong, and unqualified assertion of power, acknowledged, even by his advocates here, to have been never before made, and against the use of which this people ought to revolt. Secondly, that this claim of power, even if limited and circumscribed, as these advocates would qualify it, still asserts a power denied to the Executive by the principles of all our Republican institutions, by the positive commandments of the constitution itself, and of the exertion of which no fair example has ever existed throughout the whole history of this Government, from its very creation. And, lastly, that, even if any precedent of the claim or exertion of a similar power could be produced, such precedent could not justify it in this case of Ministers to the Congress at Pan-



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ama; inasmuch as the agreement to send such Ministers, (without which agreement they could not rightfully be sent,) was a compact, creating rights and obligations; which compact, under the Constitution of the United States, could not be concluded without the previous advice and consent of two-thirds of the Senate, and that in this case such advice and consent never had been granted, but was positively refused.

FRIDAY, April 21.

*Louisville Canal.*

The Senate then proceeded to consider the bill to authorize a subscription for stock, on the part of the United States, in the Louisville and Portland Canal Company. [Falls of Ohio.]

[This bill authorizes the purchase of 1,000 shares of the stock in the above company, provided they can be procured for a sum not exceeding one hundred dollars each.]

Messrs. JOHNSON, of Ken., RUGGLES, and ROWAN, each spoke in support of the bill; the latter gentleman argued that it was a proposition for the United States to invest their money with benefit to themselves; they were not bound to keep their money in the Treasury unproductive, when they could lay it out to advantage; and urged that this stock was believed to be the best in the United States.

Mr. CHANDLER was opposed to the bill, on principle, and called for some information, with respect to the charter, and the present state of the canal; which information was given by

Mr. BENTON, who demonstrated, at some length, the advantages which were expected to be derived from this canal, and explained its present situation, &c.

Mr. MACON offered a few remarks in opposition to the bill, being unwilling to increase the power of the General Government, directly or indirectly.

Mr. LLOYD said no doubt this was to be a precedent for other applications; he was willing the United States should go with the other stockholders, *pari passu*, but no faster; he he therefore proposed to amend the bill, so that it should read "to pay for the same, at such times, and in such proportions, as may be required and paid by other stockholders;" which amendment was agreed to.

After some further discussion between Messrs. WOODBURY, BENTON, and HOLMES, relative to the manner in which the stock was to be purchased,

Mr. VAN BUREN said the aid of this Government could only be afforded to these objects of improvement, in three ways: by making a road or canal, and assuming jurisdiction—by making a road or canal, without assuming jurisdiction, leaving it to the States; or by making an appropriation, without doing either. In his opinion, the Government had no right to do either, and at some future time he should offer his reasons in support of this opinion.

The bill was then ordered to be engrossed for a third reading,—ayes 23, noes 15.

SATURDAY, April 22.

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The Senate then resumed the consideration of the motion submitted by Mr. BRANCH, relative to the power of the Executive to appoint public Ministers.

Mr. CHAMBERS said, the first important consideration, is to ascertain exactly what we are called on by this resolution to affirm.

It was unnecessary, Mr. C. said, for the purpose of his remarks, to go into a philological argument, to prove what it is the President has intended to claim as within the constitutional competency of the Executive: a plain statement of the facts will place the question clearly before the Senate. The letters of the Secretary of State to the Ministers of Mexico, Colombia, and Central America, distinctly refer to the advice and consent of the Senate, as the condition on which alone they could expect this Government to be represented at the Congress of Panama. These letters are the official declaration of the President's views, made through the only organ by which they could be communicated, and are anterior to the date of the message to Congress. The message to Congress, alluding to the Congress of Panama, says "the Republics of Colombia, Mexico, and Central America, have invited the United States to be also represented there. The invitation has been accepted, and Ministers on the part of the United States will be commissioned, &c." Is any thing more rational than to ask gentlemen who wish to know how, and by what authority, these invitations are accepted, and the appointment of Ministers proposed, than to direct their attention to the precise words of the acceptance and proposition for appointment? By reference to the language of the acceptance and proposition to appoint, you find it expressly placed upon the condition of the Senate's concurrence. It is true, as the recital to the resolution adds, the nominations to the Senate were not submitted with the "opening message to Congress," and, Mr. C. said, he believed it was equally true, that no instance had occurred in which a nomination has been submitted with an opening message.

Subsequently the President has sent in the nominations to the Senate, and in his communication on that occasion he has referred to his notice, in the message to Congress, of the invitation received by this Government to be represented at Panama, and adds, "Although this measure was deemed to be within the constitutional competency of the Executive, I have not thought proper to take any step in it before ascertaining that my opinion of its expediency will concur with that of both branches of the Legislature: first, by the decision of the Senate upon the nominations to be laid before them; and, secondly, by the sanction of both Houses to the appropriations, without which it cannot be carried into effect."

It is this paragraph which is said, in the re-

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cital of the resolution, to "maintain the right previously announced in his opening message, that he possesses an authority to make such appointments, and to commission them, without the advice and consent of the Senate."

If by this language it is intended to assert that the President has claimed the constitutional right to grant commissions, in the recess of Congress, to Ministers deputed to represent the United States at the proposed Congress of Panama, which commissions shall continue in force until the close of the succeeding session of Congress; the assertion is admitted to be strictly according to the fact, and the only question presented is, whether the assertion of such a power is such an act of the President as calls for a protest on the part of the Senate: If, on the contrary, the language used is intended to import that the President has claimed a right to commission such Ministers, and, to clothe them with authority beyond the session of Congress next succeeding their appointment, without submitting their nomination to the Senate; it is denied that such a right has been "avowed" or "maintained" by the President; and it is believed that a reference to the language of the documents themselves, and to the concluding part of the very paragraph and sentence which is referred to as "maintaining" the right, will fully demonstrate that the President, so far from excluding the Senate from their undeniable right to advise and consent to, or to reject, the appointments, has distinctly affirmed it, and in express words has recognized two contingencies: first, "the decision of the Senate upon the nominations;" and, secondly, "the sanction of both Houses to the appropriations," *"without which the measure proposed could not be carried into effect."*

The gentleman from Virginia (Mr. TAZEWELL) has said the President has claimed the authority to make a compact in virtue of which he could oblige this Government to send Ministers to Panama. The gentleman's argument is, that, by the law of nations, no power can of right send Ministers to a Congress of Ministers; it can only be effected by previous compact between the several powers; that there being no right in other powers to send, there was, *ex consequenti*, no correlative duty on the part of the Spanish American States to receive such Ministers; that a compact of this kind was accompanied with all the obligation of a treaty; and that the President's power to commission Ministers to the Congress at Panama, necessarily included a power to create and consummate the previous pact, which pact is a *treaty*, which treaty is the *supreme law of the land*.

Mr. C. considered this to be the substance of the gentleman's doctrine. He believed it had never before been urged that the various subjects of arrangement between the Secretaries of our own Government and the Ministers of other Governments resident here, or those of our Ministers abroad, with the Secretaries or Officers of the respective Governments to which they were

accredited, in reference to the time, place, or objects, of negotiation, constituted treaties or compacts of so formal a character, as to require the confirmation of the Senate before they could be acted on. He contended that the principles of national law authorized any Government, which had acknowledged the independence of the Spanish American States, to send Ministers to that country to treat with all or any of them. It required no previous pact. It was a subject very proper for the consideration of the State or States to which the Minister was sent, whether he should be indulged with a hearing at the precise time and place at which the Congress should be assembled. The Minister at the court of a particular sovereign cannot select the time, and place, and company for the discussion of his measures. Take the case of the Court of St. Petersburg. The Ministers of several powers, say France, Spain, and Austria, propose to confer with the Russian Government on a subject of great and common interest, and in the discussion of which, they do not desire to have the Ministers of the United States, Great Britain, and other powers, to participate; can it be doubted that they have the right to execute such a purpose? Could it ever be made a subject of complaint that the Ministers of the powers who have united in the Holy Alliance should hold sessions to which they did not invite Ministers of other nations, who look upon it as a most wicked conspiracy against the rights of man—not only did not invite them, but would not receive them if they would wish to be present? While, therefore, he admitted the right of other powers to be represented at all, or any of the Spanish American Governments, he asserted also the right of these Governments to select such as they pleased to meet at Panama, on a particular occasion, to negotiate on particular subjects, and to decline receiving all others at that particular time and place.

The constitution regards the President as an independent and co-ordinate branch of the Government; not independent as to the responsibility which every officer of the Government assumes, but independent in reference to the necessity of any previous assent of any other branch of the Government to render certain acts lawful and obligatory. There are high and important duties to be performed by the President, especially directed by the constitution, for the faithful and judicious performance of which the country has, and can have, no other security than the responsibility under which he acts, but which cannot be controlled by the previous interposition of any other department of the Government; and, in the exercise of these duties, he is as much an independent branch of the Government as the Judicial department is in its sphere, or the Congress in its sphere.

This general proposition, he was assured, would not be disputed; but the immediate matter of inquiry was, whether the case, now the subject of consideration, the "appointment

of Ministers in the recess," was amongst the duties, and within the authority, of the President, by the terms of the constitution.

The gentlemen opposed to us say that he has no such authority, except where the commission is directed to the successor of an individual, who had previously filled the same station, and whose death, resignation, or removal, had occurred since the last session of Congress. For the converse of this opinion, the second article of the constitution is relied on, and is believed to embrace the case. It is thereby provided, "that" the President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, appoint, Ambassadors, other public Ministers, and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not otherwise provided for, and which shall be established by law."

It was not his good fortune, Mr. C. said, to hear the gentleman from Massachusetts, (Mr. MILLS,) who had collected, he understood, a variety of cases, running through all the period of the Government, from the adoption of the constitution. To these instances he referred, generally, and should particularly mention one or two others. The first was the case of the mission to Great Britain, in 1806. Mr. Monroe was the resident Minister at St. James. The relations between this country and Great Britain required, in the opinion of the President, the agency of an adjunct Minister. Such a proceeding was not provided for by any statute of this country. Mr. Pinkney, however, was sent abroad during the recess of the Senate, and in a time of profound peace, with a commission, dated in May, 1806, which constituted him adjunct Minister Plenipotentiary to the Court of St. James. It is well known that Mr. Monroe and Mr. Pinkney concluded a treaty in virtue of this commission, which was sent home, and which Mr. Jefferson, the then President, did not approve, and did not submit to the Senate. This case, it is believed, is not subject to any of the exceptions which have been applied to the instances enumerated by the gentleman from Massachusetts, (Mr. MILLS.)

The proceeding in this case can only be justified by reference to the power of the President to commission a Minister in the recess of the Senate, if, in his discretion, the exigencies of the country demand it, although no resignation, removal, death, or disqualification of a predecessor in the same office had occurred. If there was such an office existing under the law or constitution, it was the office of a single Minister to Great Britain. A second or adjunct Minister did not before exist. It was, therefore, a new mission. It was originated in the recess of the Senate. The Minister executed the duty incident to his appointment by concluding a treaty, and yet, in no one de-

partment of the Government, and by no one individual, was it suggested that Mr. Jefferson had transcended his constitutional powers.

Mr. C. also referred the Senate to the case of the appointment of Mr. Gallatin, Mr. Adams, and Mr. Bayard. These gentlemen were commissioned by the President in the recess of the Senate, and sent to Russia, with powers enumerated in their three several commissions, as "Envoys Extraordinary, and Ministers Plenipotentiary, to negotiate a treaty of peace with Great Britain," "a treaty of commerce with Great Britain," and "a treaty of commerce with Russia."

The circumstances connected with this case are important in the consideration of its influence on the question now in discussion. This nation was involved in war with Great Britain, which it was the interest of the country and the duty of those who conducted its concerns to terminate as soon as the objects for which it was declared could be effected. The friendly mediation of the Emperor of Russia, it was supposed, could be usefully brought to operate in aid of such a result, and these Ministers were sent to Russia, not to Great Britain, with a commission, dated 17th of April, 1813, which contained authority to "agree, treat, consult, and negotiate of and concerning, the general commerce between the United States and Great Britain, and all matters and subjects connected therewith, and to conclude and sign a treaty or treaties touching the premises." It is true they did not treat in virtue of this commission, the treaty subsequently formed having been concluded under a commission to five Ministers, of whom these were three.

Much effort has been made by the gentlemen from Virginia and South Carolina, Mr. TAZEWELL and Mr. HARPER, to lessen the effect of the cases as authority, because the appointment was made during war. The last gentleman, with much ingenuity, has also attempted to make this a case of filling a vacancy. The war, he says, produced the vacancy, and the filling that vacancy was in obedience to the express language of the constitution. That this doctrine will not meet the case will appear evident, first, because according to all the authors on the subject, a war not only suspends the commercial or friendly relations of the belligerent powers, but totally puts an end to and destroys them, and those relations which are the result of negotiations subsequent to the war, are as perfectly independent of those which existed previously as if no intercourse had ever subsisted between them prior to that period. Nations, therefore, between whom amicable relations have subsisted, and who have afterwards become belligerent, assume towards each other the same attitude as if such amicable relation had never subsisted, and the cessation of the war would give to each the same claims upon the other, and in all respects, entitle each to the same consideration which could be claimed by any other independent nation with whom no correspondence or interchange by Ministers had

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been had. The office, therefore, created by the commission to these three gentlemen, was as perfectly a new one as would be that of a Minister to Hayti, if one were now to be commissioned to that Government.

But, if this were not an efficient objection to the gentleman's position, it may be remarked that the case cannot be brought within the exact letter of the constitution for a second reason, which is, that *the vacancy did not occur in the recess*. The war, in this case, caused the ministerial office of the predecessor of these gentlemen to cease. The war was declared by Congress, and of course the cessation of ministerial power occurred "*sedento senatu*." Not only was Congress in session when the *vacancy*, as it is termed, happened, but the whole session of 1812-'13 had commenced and terminated, the office still remaining unoccupied. This transaction was at a period of party excitement unparalleled in the history of this country, when every angry feeling was aroused, and when many of the political men of the day were induced, by prejudiced views of the policy, if not of the integrity of the dominant party, to allege against the measures of the administration every cause of exception which had the semblance of truth, reason or principle for its foundation. In this state of feeling, with the bitterest party animosities to quicken the inventive power of the sagacious politicians, who were straining every nerve to direct popular opinion against the authors of this measure—feelings which led to violent inflammatory resolutions in town meetings, and in several of the State Legislatures, and to all the usual means of bringing odium on the individuals by whom the destinies of the nation are wielded—we find a feeble effort made in this body to pronounce the act of the President unconstitutional—feeble it is intended to say in point of effect, for it does not appear that Mr. Gore's resolution had friends enough to encourage them to an exhibition of their strength by yeas and nays. Indeed, the resolution itself takes exception to one only of the commissions, that which gave authority to make a *treaty of peace*, and says nothing of the other of the same date, which gave authority to conclude a treaty of peace. But assuming it to impeach the principle on which the President had acted, in granting each of the commissions, it was not sustained in the Senate. The proceeding, with this exception only, was submitted to without complaint, by every department of the Government. It was submitted to in Congress, and out of Congress; it was submitted to by the people of the country, amongst whom are individuals perfectly competent to form an opinion on the subject, and as sensibly alive to any violation of that charter of their liberties as any man holding a seat on the floor of Congress.

With regard to the appointment of Mr. Pinkney, in 1806, it did not appear to be affected by any of the arguments urged against the other cases. It was in time of profound peace. To the introduction of the other cases as an au-

thority, the gentleman from Virginia (Mr. T.) had urged objections which, notwithstanding the eloquence with which he had advocated them, had failed to leave on his mind the impression they had made on the gentleman. He had treated the cases as a class, and has told us that the authority by which the appointments were made, can be resolved into the fair exercise of the powers of the President in his capacity of Commander-in-Chief of the Army and Navy of the United States; and, inasmuch as the President, in that character, could rightfully do what was done, it is a sufficient answer to these cases to show that the authority is incident to that particular capacity of the President, and cannot be exerted but in time of war. The gentleman has made great effort to sustain the authority of the President, as Commander-in-Chief, to make these appointments: he could have made these treaties, said he, in person, as any other commanding General could, and he could depute another to do the same thing in his place.

Mr. C. denied this doctrine in toto, and affirmed on the authority of the writers on the laws of nations, that the Commander-in-Chief of the Army and Navy of the United States, or the commander of any other Army or Navy, had not competent authority to make and conclude a treaty of commerce—no, not even a general truce. A Commander-in-Chief can rightfully exercise all the powers necessary for the prosecution of the war, and the President, who is clothed with all the attributes with which the constitution has surrounded him, can claim, perhaps, all the powers of Commander-in-Chief, because the constitution has so created them. He has, by the constitution, several other offices and duties, some Executive, some Legislative; but it has never been asserted or intimated that the President has the sovereign power of the United States. The only postulate the argument requires is, that the sovereign power resides elsewhere. Gentlemen may place it in relation to this particular in the hands of the President and Senate, who, by the express words of the constitution, are declared to be the treaty-making power; or, in the hands of the people or States of the Union, and then are bound to admit that this attribute of their general sovereignty has been delegated to the President and Senate by the unequivocal grant of that instrument, the object of which was to define the particular portions of sovereignty parted with, and to whom, and the particular portions retained by the people of the States. The sovereign power alone, or the delegate of the sovereign power of a nation, is competent to make and conclude a treaty. The sovereign of the country may at the same time be the military commander, and such is the fact in despotic governments; but the legitimate exercise of this power can only be referrible to the character or capacity of sovereign.

That the power to conclude treaties is not incident to the capacity of the President, as the chief Executive officer of the Government, or as

a component part of the legislative branch of the Government, is distinctly asserted in the *Federalist*, No. 75, before referred to.

MONDAY, April 24.

The Senate having resumed the consideration of Mr. BRANCH's motion relative to the power of the Executive to appoint public ministers,

Mr. CHANDLER said this was a case altogether unknown to the framers of the constitution, as coming within the law of nations, which provides for the appointment of foreign Ministers and Ambassadors. This was a Congress got up by treaty by several different nations, in which they combine and agree with each other in alliances offensive and defensive; and this Congress, for these purposes, was to meet at Panama. The President said, in his opening message, that we should take part in the deliberations of that Congress, and this was the purpose for which the commissioners were to be appointed. This was, Mr. C. said, appointing Ministers to a Congress of a number of Governments not known to the constitution. The President considered it to be within his constitutional competency to have done this. It was not within his constitutional competency to have done it during the recess, because it was not an individual Government, to which alone the constitution contemplated sending Ambassadors or Ministers. The President having claimed this right, if it had passed unnoticed by the Senate, it would have been brought forward as a precedent hereafter. Mr. C. said he did not think that President Adams would ever attempt to propose another mission to Panama, under any circumstances, but, at a future time, other men might feel inclined to make use of this as an authority. He therefore should vote against the indefinite postponement of the resolution.

Mr. MACON said that no President had ever before claimed the right that had been claimed in this message. On this question he doubted, as he did on all others. The reason why no mission had been made exactly like this, was, that no claim had ever been made before. He agreed it was never worth while to make new Ministers unless there were new occasions. The occasion was as new as the Minister, and something was necessary to be done. How did this power come from one department to another, formed as this Government is? It was useless to look back in history, because there was no Government to look at. What, said Mr. M., had been the constant practice in our own Government? Had it not been a constant increase of Executive power? There was hardly a session of Congress passed but what some power, some patronage was gained by the Executive. We had a very recent and memorable example before us. President Monroe had said that the United States "owed it to candor, and to the amicable relations existing between the United States and those powers, to declare, that we should consider any attempt on their part to ex-

tend their system to any portion of this hemisphere, as dangerous to our peace and safety;" and that "we could not view any interposition for the purpose of oppressing them, or controlling in any other manner, their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition towards the United States. In the war between these new Governments and Spain we declared our neutrality at the time of their recognition, and to this we have adhered, and shall continue to adhere, provided no change shall occur, which, in the judgment of the competent authorities of this Government, shall make a corresponding change, on the part of the United States, indispensable to their security." It was hardly noticed at the time; and now what had it become? He should like to see the letter addressed to the Mexican Government. Now they were told that this was a *pledge*, and the United States were to take the front of the battle. If every department of this Government, the Senate, the House of Representatives, and the President, did not watch the power which the constitution has given them, but let it be taken from them by piecemeal, who could tell where it would end? In the reign of George the First the same arguments were used in England, in regard to the Executive power. Mr. M. said he had heard the debates in Congress before he had the opportunity of reading those of the British Parliament, and it appeared impossible they could be so much alike, without having seen them. This was not the first mission of the kind. Gore's mission was of the same kind. This mission was deemed within the competency of the Executive. Why did he do it? Not on account of the doubt of the power, but it was put on the expediency of the mission, and not on the power of the Executive. It was expedient for them to wait: hence they waited. Much had been said about the character of the Panama mission, in this discussion. They must be Ministers, Ambassadors, or consuls, and if the President could appoint them without a law, what was to prevent him from appointing the Judges of the Supreme Court? for they were all in the same article of the constitution. The gentleman had said there could be no appropriation without a law; so he would say there could be no Minister without an appropriation. Mr. M. said he suspected, if this appropriation bill was to be lost, there would be no mission to Panama. What would become of the office created? After passing a law there was an obligation. After passing a law to establish a Supreme Court, there was a moral obligation to make judges and salaries. But in this instance there was no obligation; it had nothing to do with it.

It had often been said, that in this Government, the departments were to balance each other. How was this balance to be kept up? Not by constantly increasing the power of one department of this Government; but the House of Representatives should take care of the portion

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committed to them, the Senate theirs, and the President his. Was this House, when their rights were, as they supposed, infringed, to wait for the interference of the House of Representatives? There was, Mr. M. said, a tendency in every Government to create power. The constitution had given the courts power to declare what was unconstitutional, and why so? Because the Government would go beyond the limits. Governments were made on the suspicion that all those who had power would go wrong. He would go further, and suppose it a doubtful question whether the Executive, in his message, had claimed this power or not. Most of the gentlemen who contended that he did not, had contended that he had the right to do so. If the majority of the Senate thought differently, was it not prudent in them to express their opinion? Had they not the same right to express their opinion on their powers, and was it not as much their duty to do so as for the President to declare his? A law had been passed which the Supreme Court declared to be unconstitutional, but it was never enforced.

There was no analogy, Mr. M. said, in the cases cited, between European Governments and this Government. There, even in the most limited monarchy in Europe, the appointment of Ministers was in the crown alone. He meant England. How was it here? Every thing was divided and carved out, this to one, that to another, and that to a third. But, in all those cases in Europe, there was an understanding that those Ministers were to meet, and what they were to do. How was it in the present instance? They were to do any thing or nothing; they were to talk of matters and things in general. Was it ever doubted that the British Executive could not appoint a man to be an Ambassador to do any thing? That is not the case here, and all this reasoning, derived from the practice of European Governments, had no analogy at all with our Government. Balance any thing—get a rail and place it on a fence, and play at *see-saw*; give one a little more than the other, and away he would go: so it was with these powers; give one of them only a hair's breadth more than it ought to have, and the balance would be destroyed. First the power was denied absolutely; then a little was done, then a little more, and now, Mr. M. said, it had become a matter of course, and his objections were considered as much out of fashion as his boots, to say the least of them. They had a strong impression, in coming here, that this was to be a meeting of Republics, and that the United States claimed to go as the oldest republic. They were to settle the public law for America. As well as sisters there were to be brothers there. Brazil, Britain, and probably France, were invited, and all this was to settle the public law for America.

On the subject of our going to *advise*, Mr. M. said they had the right of advising the President, and he had never heard of a nation that wanted the advice of another. He never knew a single individual who wanted the advice of another.

If there was one man that did, there were 100,000 that did not; the advice might be given, but the man would go his own way.

Mr. M. said it had been stated, in the course of debate, that there was no stir among the people. In the mess in which he boarded, he did not recollect having received one letter, from a man that attended at all to the public business, but what it mentioned this claim of power. Since the publication of the documents, he had received two letters in which it was asked whether they meant to let the resolution sleep? In every State of the Union there were as clever men as any here, who watched this body and commanded them to take care of the constitution and their rights. If any thing was wrong, it must be put down; but if truth was on the side of the administration, they never need mind any investigation. Mr. M. said he wished the administration would so act that he might vote for all their measures. Judging from the letters he received, he should suppose this subject was much agitated in the country. As he said some time ago, it seemed to him, from reading the message, as coming to Congress on the expediency: if it applied to the acceptance it was a little remarkable it had not been put in the same sentence: for, at the next paragraph, it made a new start. It was like going to a new section. He could not discover the connection.

The Senate adjourned.

WEDNESDAY, May 8.

#### *Judiciary Bill.*

The Senate proceeded to the re-consideration of their amendment to the bill "further to extend the Judicial System of the United States," which had been disagreed to by the House of Representatives.

Mr. VAN BUREN said that he would state, in a few words, the points of difference between the two Houses. One related to the arrangement of the circuits, the other to the provision requiring the judges to reside within their respective circuits. He had not particularly adverted to the latter when the bill was under consideration, because, at that time, he had entertained the belief that no objection would be urged against it. Its rejection, therefore, by the House of Representatives, was as unexpected as the reasons assigned for it were, in his opinion, untenable.

By the Judiciary Act of 1793, it was left to the Judges of the Supreme Court to allot themselves to the different circuits of the United States, once a year, at their discretion. By the act of 1802, it was thought proper to allot them, by law, to certain circuits, within which they were required to reside. He would not consume the time of the Senate by reading the act. It will readily be perceived, by a reference to it, that this is the effect of the provision, although somewhat ambiguous in its phraseology. The act of 1802 also provided that, in the

event of a new appointment, a new allotment might take place; but, whatever might be the allotment, it still required that, in the old circuits, the courts should be held by a resident judge. There was but one exception. This was the circuit composed of the States of Pennsylvania and Delaware. It became necessary, either to make the exception, or to drive from his residence, at Mount Vernon, or from the bench, one of the most estimable members of the court—an act which no former Congress had been willing to commit, and of which, he hoped, no future Congress would be capable. In consequence of this, however, the State of Pennsylvania has been subjected to what her citizens consider a great inconvenience. That reason still exists. The State of Virginia has two Judges of the Supreme Court, and both cannot be assigned to the Circuit, of which it forms a part. In 1807, when an additional circuit was established, composed of the States of Ohio and Tennessee, it was expressly enacted, that the judge should reside within the circuit for which he was to be appointed. The amendment of the Senate, now so strongly opposed, is a mere extension of the same principle—a principle not only sanctioned by authority, but recommended by its manifest utility.

Among the objections urged against this point of the amendment of the Senate, there was one, he said, not merely fallacious, but reprehensible. It had been alleged, elsewhere, that it was the design of the amendment to place the Western States on a footing inferior to that of the old States. This objection was unsupported by facts, and was made, he had charity enough to believe, without due examination. It was, on the contrary, the object of the amendment, to place the Western States on the same footing with the old States; to secure to them the advantages enjoyed by a residence of the judges within the circuits, and protect them from the inconveniences experienced by Pennsylvania and Delaware. Mr. VAN BUREN expressed his belief that there was great injustice in this attempt to excite sectional prejudice without the least foundation. There was nothing in the facts to warrant the inference; and he could appeal with confidence to the Senators from those States, to sustain him in his position. They had witnessed the untiring zeal with which gentlemen, from different and remote portions of the Union, had supported the just claims of the West; and, from whatever motive misrepresentation might proceed, he had the satisfaction to believe that, in that body, the subject was well understood, and every thing belonging to it justly appreciated. Mr. VAN BUREN thought that the frequency with which appeals had been made to local prejudices, was an evil which deserved the utmost severity of reprehension.

An objection, he said, had been taken to the form of the amendment, which, though plausible, was not solid. The amendment speaks of the three additional judges, as judges *appoint-*

*ed for the three new circuits*: and it is supposed that this gives to the offices of the additional judges, the character of "circuit judges only." Mr. VAN BUREN said that he had, in his opening observations, had occasion to remark, that he was prevented, by indisposition, from attending the committee, the morning when the amendment was first agreed upon and reported. Its phraseology had not, on that account, attracted his particular attention. If it had, he would have preferred a different form, in expressing the object of the amendment. At the same time, the objection, he said, was only technical, and the true sense of the amendment was sufficiently expressed, to leave neither doubt nor difficulty in its execution. The first section of the bill provides that the judges to be appointed shall, to all intents and purposes, be Judges of the Supreme Court, and the second is only descriptive of the objects for which their appointment was authorized. Even, upon the ground assumed by those, who, instead of looking at the substance, have chosen to criticize the form of the amendment, the description is accurate. The Judges of the Supreme Court are, under the law and constitution, circuit judges, as well as Judges of the Supreme Court. Sitting in the circuit court, they have powers and duties distinct from the powers and duties of the Supreme Court, and with which, when sitting on the latter court, they have nothing to do. But he would not detain the Senate longer on that point. If the House of Representatives were in favor of the principle of the amendment, but thought its form objectionable, why did they not amend it? It would have been in order to have done so. This, however, they have omitted, preferring to rest their opposition upon an objection which it was in their power to have removed. Nothing but his habitual respect for the other branch of the Legislature, restrained the conviction that it was the sole object of the first objection to the amendment, urged, indeed, as it was, with so much seeming earnestness, to cover the real ground of dissatisfaction—the arrangement of the circuits.

The other point of disagreement relates to the separation or connection of Ohio and Kentucky. On that subject he had only to say, that it is a question of a purely local character, in which the Western States, alone, are interested. The object of the bill, itself, is to make provision for nine Western or North-western States. They are embraced in the three circuits provided for. Of the eighteen Senators representing these States in this body, fifteen are in favor of the amendment of the Senate. He would venture to say, that, on questions of a character so exclusively local, on which any difference of opinion has existed, there have been few, if any, instances, characterized by such uncommon unanimity. To bring the subject into a narrow compass—in the two circuits which are directly affected by the question, there are *five* States, and of the *ten* Senators by

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whom they are represented, *seven* are in favor of the amendment of the Senate. This unanimity of sentiment, among those, too, who do not usually concur in opinion on other subjects, had a strong tendency to confirm his previous impression, that the amendment was correct. If, upon subjects of this character, we are not to rely upon the representations and opinions of those who are most familiar with their operation, and most concerned in their results, where, and on whom, let me ask, are we to repose our confidence?

Mr. VAN BUREN said there was one view of the subject which he was anxious to impress upon the minds of gentlemen, and which ought, in his opinion, to silence the opposition, at least in the quarter from whence it chiefly proceeded. Is it objected that two judges are too many for the five States of Ohio, Kentucky, Missouri, Illinois, and Indiana? No, sir. Those who advocate the bill as it came from the House, have, throughout, contended for two additional judges to hold their circuits within those States. And can one judge transact the business in Kentucky and Ohio? No one could doubt it. He would have to attend the term of the Supreme Court, which could not employ him more than three months, including travel; this would leave him nine months, in each year, to hold the circuits in Kentucky and Ohio, at places not more than one hundred miles apart, with excellent roads, and every other facility for travelling. It is only necessary to state the case, to show, incontrovertibly, that, whoever else may have cause to complain, Kentucky and Ohio will not—at least on the supposition that they have no other views than the administration of justice among their citizens. Why, then, do *they* object? Why should *they* complain that a judge is also given to Missouri, Indiana, and Illinois? It is true that, by the amendment of the Senate, Kentucky and Ohio cannot *each* have a judge. But, ought not the idea to be spurned, that it is the *judges* and not the *court*, the *administrators* and not the *administration* of justice, which have been so earnestly and loudly called for by these patriotic States? He would not, for a moment, entertain an idea so degrading to these respectable members of our Confederacy. The Representatives from Ohio and Kentucky will recede. Their known intelligence will discern the danger of this ground. Should this bill fail, they cannot but be aware of the difficulty which would attend any subsequent effort to induce the Representatives of other States to act upon the subject, especially if an impression should exist that a scramble for office was at the bottom of all the movements which have taken place.

The just rights of Kentucky and Ohio being thus satisfied, he would say a few words as to the other States. He could not but express his surprise, that the objection that too much had been done for them, had proceeded from Ohio and Kentucky. That they had an equal right, with others, to urge this objection, there can be

no doubt: but he still thought that there were some circumstances in the case which would have rendered its emanation from the old States more appropriate. He was free to admit that it was an act of liberal legislation in favor of the States of Illinois, Indiana, and Missouri. An application for an additional judge in any other of the States, would not be listened to for a moment. If justifiable at all, it was only so in consequence of their forming three sovereign, independent States, and, if not leading, certainly prominent members of our Union. It was this view of the subject, and the consideration of their rapidly increasing population, which had induced him to yield his assent to a measure by which the administration of justice would be placed on a more perfect and permanent footing. This would be effected by the amendment proposed by the Senate, in conformity with the views expressed by the representation from these States, in both branches of the Legislature, without a dissenting voice. Why should Ohio and Kentucky, having their own claims satisfied, desire to impose on these States a plan to which their Representatives are decidedly opposed? I cannot but persuade myself that, upon reflection, they will abandon a ground, which, to my judgment, appears alike ungracious and untenable.

The question arises, what will now be the decision of the Senate? Shall we *insist*, and ask a conference, or *adhere*, and thus avow, at once, frankly and explicitly, the course which we mean to pursue? On the score of respect, there could be no objection to either course. If the Senate are disposed to yield either of the points, it would be advisable to insist, and ask a conference. If, however, they have formed the deliberate conclusion not to yield, it appeared to him best to adhere: and, in order to test the sense of the Senate, he moved that they do adhere to their amendment.

The motion was further sustained by Messrs. BENTON, BRANCH, HOLMES, ROWAN, and WHITE, and was opposed by Messrs. RUGGLES, HARRISON, and JOHNSON, of Kentucky, and was finally carried by yeas and nays, as follows:

YEAS.—Messrs. Barton, Benton, Berrien, Branch, Chandler, Clayton, Dickerson, Eaton, Edwards, Findlay, Harper, Hayne, Hendricks, Holmes, Kane, King, Lloyd, Macon, Noble, Randolph, Robbins, Rowan, Smith, Tazewell, Thomas, Van Buren, White, Williams, Woodbury.—29.

NAYS.—Messrs. Bouigny, Chase, Harrison, Johnson of Kentucky, Johnston of Louisiana, Knight, Marks, Reed, Ruggles, Sanford, Seymour, Willey.—12.

[The effect of the vote of adherence is to preclude, on the part of the body adopting it, all compromise on the question.]

THURSDAY, May 4.

*Reduction of Executive Patronage.*

Mr. BENTON, from the Select Committee to whom was referred the subject of inquiring into



the expediency of reducing the patronage of the Executive Government, made a report, which was read. The report was accompanied by the six following bills:

A bill to regulate the publication of the Laws of the United States, and the public advertisements;

A bill to secure in office faithful collectors and disbursers of the revenue, and the displacement of defaulters;

A bill to regulate the appointment of Postmasters;

A bill to regulate the appointment of Cadets;

A bill to regulate the appointment of Midshipmen;

A bill to prevent military and naval officers from being dismissed the service at the pleasure of the President; which were severally read, and ordered to a second reading.

Mr. TAKEWELL then moved that an extra number of the report and bills be printed.

Mr. RANDOLPH hoped that the largest number would be printed that had been printed of any document during the present session, whether that document was any message sent to this body, or an attempt to answer, which they could not do, the argument of his friend to the right; or under color of a message to the House to announce an electioneering arrangement, what in Maryland was known by the name and appellation of a stump speech. Though he had little faith in the strength of the virus of the Executive poison which was attempted to be instilled into the public mind, he wished the antidote to proceed with it, *passu.*

Mr. TAKEWELL said, his ignorance of what that number was, occasioned his leaving the blank.

It was then moved to fill the blank with 6,000, which was carried.

#### MONDAY, May 8.

Mr. VAN BUREN, from the Committee on the Judiciary, to whom was referred the message from the House, requesting a conference on the subject of the Judiciary bill, made the following report:

"The Judiciary Committee, on the message from the House of Representatives, proposing a conference on the subject of the disagreeing votes of the two Houses, on the amendment proposed by the Senate to the bill, entitled 'An act further to amend the Judicial System of the United States,' report:

"That, in the opinion of the committee, the condition of the question, and the circumstances of the case, render a concurrence in the proposed conference inexpedient. They will, in deference to the high source from which the invitation has proceeded, make a brief explanation of the reasons which have led to this conclusion. The amendment proposed by the Senate was freely discussed, and adopted with but four dissenting voices. Upon being advised of the disagreement of the House of

Representatives, the question was distinctly presented to the Senate, whether it would *insist*, and ask a conference, or whether it would at once *adhere*, and thus, probably, although not necessarily, avoid one. Upon full discussion, and careful consideration of the subject, the Senate, with but twelve dissenting voices, decided to adhere, and thereby prevent the unprofitable formality of a conference, at this advanced period of the session. That decision was within the rules established for the government of the two Houses, consistent with usage, on other, and important occasions, (and it cannot be necessary to say) was made without the slightest disrespect to the House of Representatives. The committee believe that the same unanimity with which the question of adherence was originally determined in the Senate, still exists. The appointment of conferees would be a virtual waiver of the vote of adherence, or, if otherwise considered, would manifest a disposition to meet the conferees of the other House upon unequal terms. Assuming that the Senate is opposed to a waiver of the vote of adherence; and believing that the appointment of conferees, without it, might justly be considered objectionable by the House of Representatives, the committee recommend the adoption of the following resolution:

"Resolved, That, in the opinion of the Senate, no good will result from a conference upon the subject of the disagreeing votes of the two Houses, on the amendment proposed by the Senate to the bill, entitled 'An act further to amend the Judicial System of the United States,' and that the Senate does, therefore, decline the same; and, further, that a copy of the annexed report be sent to the House of Representatives, as explanatory of the views of the Senate."

The report was read, and ordered to be printed.

#### Amendment to the Constitution.

The Senate then took up the resolution proposing an amendment to the Constitution of the United States, as it respects the election of President and Vice President of the United States.

Mr. DICKERSON said he did not rise to enter into an argument upon the resolution, but to offer an amendment. He believed that the plan of a second election by the people, as proposed in the resolution, was inexpedient and impracticable: that he could perceive no well-grounded objection to the choice of electors, provided they are chosen in single districts; that electors never have abused their power, nor could it be feared that they would; that the object to be gained by the change proposed was not such as to warrant an alteration of the constitution; although he would have been satisfied with the mode proposed, if it had been originally adopted and found to be safe in practice; that the amendment he offered proposed to elect the President, in the last resort, by a joint ballot of the two Houses of Congress, voting *per capita*—a body which would be precisely analogous to the whole body of electors, should they be brought together; that the strong objection to a choice by the House of Representatives, voting by States, did not ap-

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*Amendment to the Constitution.*

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ply to a joint meeting of the two Houses; that there could be no danger in trusting them with this important duty.

Mr. BENTON said it was very well understood throughout the Senate, that this resolution was not to be acted on during the present session. The reason would be apparent to every one. The resolution was reported in the Senate at an early day, and was put off from day to day, and from week to week, upon the request of gentlemen, until the same subject had been taken up and discussed in the other branch of the Legislature. It was not, Mr. B. said, deemed advisable to carry on a duplicate debate at the same time; and the issue of the discussion in the House had been such, that it was not deemed advisable to take any further step to get a definitive vote on it this session; but it was deemed advisable to keep the subject in a situation for being acted upon at the earliest possible day at the next session, earnestly and vigorously, and to have it decided one way or the other. It was with a view to this resolution, and some other subjects of importance, which it was probable would not be finished at this session, that he had conceived the idea of continuing over all the subjects remaining for discussion to the next session, that they might then be taken up, without loss of time. Mr. B. said, should not this rule pass, he pledged himself to the Senate, and to the American people, that he would again move the reference of the subject to a committee, and have it disposed of as early as possible. It was here, Mr. B. said, as it was with their great prototype the British Parliament—the greatest difficulty in getting any thing done, was to find the right time for doing it. When the great question of reforming the British House of Commons was brought up, it was agreed all round that the representation ought to be reformed, but the difficulty was as to the right time of accomplishing it. During the American war it was the wrong time, and after the French Revolution broke out, it was the wrong time still. This resolution, Mr. B. said, was introduced two years ago, and it was then deemed an improper time, because the Presidential election would soon come on. It was again introduced soon after, and then it was an improper time—it was too soon after the election, and it might have a bearing on the events of that election, and be considered as personally offensive; therefore, as it was impossible to find a time which should be free from objection, Mr. B. said he would pledge himself to the Senate and to the American people, to continue the subject with all the energy he was master of, till he brought it to a conclusion. He would endeavor to get a decisive vote on the principle which the resolution contained; he did not do it from a spirit of reckless perseverance, but from a conviction that the principle itself was correct, and one which was approved by an immense majority of the American people, so far as he had any opportunity of learning their senti-

ments, and if they could get a chance of voting on it, it was one which they would carry. Mr. B. concluded by saying, that if he could not get it before the people, upon a proposition submitted by Congress, he would transfer his exertions to a different theatre—to the theatre of the people themselves, and urge the call of a national convention.

Mr. VAN BUREN said, that, being a member of the committee by whom the resolution, under consideration, had been reported, he would add a few words to the observations made by the Chairman. He concurred in the propriety of the disposition of the resolution proposed by the Chairman. The advanced period of the session, would alone furnish a sufficient inducement for the adoption of that course, but he had further reasons. The progress which had been made in the subject in the other House, was well known to the Senate. The result of its deliberation satisfied him, that, if there was time sufficient to act definitively upon the subject here, nothing efficient could be done at the present session. He would, if his life was spared, unite his exertions with those of the Chairman, to press the matter to a favorable conclusion early in the next session; and, notwithstanding that the question would have to be decided by the same House of Representatives, he would do so in full confidence, that their labors would be crowned with complete success. He would briefly state his reasons for that belief. He was satisfied that there was no one point on which the people of the United States were more perfectly united, than upon the propriety, not to say, indispensable necessity, of taking the election of President from the House of Representatives. The experience under the constitution, as it stands, as well formerly as recently, had produced that impression, and he considered the vote of the House of Representatives as the strongest manifestation of its existence. In that respect, it would be of value, but beyond that, it could produce no results. Although it could, he thought, be satisfactorily shown, that the small States would, if nothing more was done, be better off than they are under the constitution, as it stands, still all experience has shown that they do not think so. There is no reason to believe that they will ever consent to give up the power they now have without an equivalent, without a resort to the principle upon which the constitution was founded—that of compromise. The equivalent with which they would be satisfied, with which they ought to be satisfied, is the breaking up of the consolidated strength of the large States, by the establishment of the district system. It is in vain, therefore, for gentlemen to be, or to affect to be, in favor of taking the election from the House, unless they are willing to do that also, without which the leading object cannot be effected—without that, all is empty profession. We must, for the purpose of the election, make all the States of the same size, which would be

the effect of the district system, and then, and then only, can we give the election of President and Vice President to the people, preserve the purity of the system, and, in reality, restore the balance of power among the States to the footing on which it stood at the adoption of the constitution. Believing that the desire to take the election from the House had sunk deep in the public mind—knowing the all-powerful agency which public sentiment fortunately had in our Government—he had the strongest hopes that the correct sentiment which now happily existed upon this one point would be able to carry the other with it. He hoped, and believed, that the people of the United States would, in the coming recess, in all constitutional forms, express their opinion upon this subject. If they did so, and if they really desire the election of their Chief Magistrate, and were true to themselves, another session would not pass by without an opportunity being furnished to the States to express their opinion upon this most interesting subject; a subject with which, in his opinion, the future welfare of the country, and the liberties of its citizens, were more closely connected than any other which had been agitated in Congress since the adoption of the constitution.

Mr. MAISON said there was no time now for the discussion of this question. He never wished great questions such as this, to be taken up when the members were exhausted; but he was very willing to take it up at the first day of the next session, and go on with it till it was decided. Mr. M. said he had been uniformly in favor of the district system, but on such a mighty question—and this was one that increased daily in magnitude—it could hardly be expected, that in a Government like this, it could be done at once. The gentleman from Missouri might satisfy himself that this question must be decided by Congress some time or other. The cases he had cited in England were certainly true, but the comparison did not hold with the character of the two Governments, and the power of the people. In England the right of voting was limited to a few, and there were many boroughs which had only a single vote. Here, nothing of that kind existed; here, everybody votes. No person has the power of sending a member here; therefore, the difficulties were not, he thought, so great in this country as in England. The idea of reform is gone in England at present. Though it was known in the earlier part of the Revolutionary war, such is the character of man, such his unwillingness to part with it, that it was not till the year 1781 that the Articles of Confederation were signed; there was no National Government till then. The moment peace came—indeed, before the peace took place—every man in the United States was convinced that the Federal Government could not answer the purpose for which it was intended. It was then the year 1787, before an attempt

was made to revise this Government. Still the opinion had progressed that the Federal Government must be altered. Mr. M. said, when they looked back and saw how things progressed, the gentleman should not despair of his measure, but give time for this principle to progress through this extensive country. He did not know whether he could go so far with the gentleman from Kentucky as that gentleman wished. If the thing was right, all that was necessary was perseverance. If the people were capable of self-government, we ought never to despair of carrying measures that were calculated to promote their happiness. No great events were ever brought about but by perseverance. So in these amendments, we ought not to despair, but to persevere.

There seemed to be, Mr. M. said, an opinion prevalent, that the constitution was too sacred to be touched. Certainly it ought not to be amended on slight occasions. The first Congress that met under the Federal Government were so convinced that it wanted amendment, that they proposed several. The faults in the constitution, said Mr. M., will never be discovered till you go into action; you must try it by experiment, and if, on experiment, it does not answer the purpose, then propose to amend it. I am against any amendment on mere theory; but, when an inconvenience is found to result from practice, it is the duty of Congress to provide that remedy which experience has demonstrated; and that is the case in the present instance. The inconvenience has been felt, and under this view of the thing, there is nothing to be alarmed at. Look back to the beginning of this Government, and see how many scenes we have passed through. Only leave the people alone to their good sense, and they will set the thing right themselves. This Government is founded on the principle that the people have sense enough to govern themselves; and if passion should sometimes show itself, it will burn out, and reason will resume her throne, and the thing will come right. It is true there are times that are more favorable than others for getting any thing great done; and next session, or the session after that, will be as favorable a time for getting this done as any that can happen. I mention this because I do not know that I shall be here two years hence. Elections will take place, a new third will come into this body, members will be fresh, and this is a great object which will be agitated in all the elections. I have no objection to laying the resolution on the table.

Mr. BRANCH said, believing as he did that the perpetuation of the liberties of this people depended on the adoption of the amendment proposed; believing that it depended on bestowing on the people the right of choosing their Chief Magistrate; believing, further, that it could not be maintained without yielding an equivalent to the small States; he rose for the purpose of returning his thanks to the gentle-

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*The Judicial System.*

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man from New York (Mr. VAN BUREN) for the magnanimity he had displayed on the present occasion, as he had done on all others. He said his magnanimity—for having expressed to the Senate his willingness to yield up the present system to adopt the district system, provided that he could get the amendment that was proposed. He trusted the influence of this example would not be lost on the large States of the Union, and that Virginia would follow the example of New York, and display that liberality which was becoming her character.

On motion of Mr. BENTON, the resolution was then laid on the table; and Mr. DICKERSON's amendment was ordered to be printed.

TUESDAY, May 9.

*Don Carlos Dehault Delassus.*

The Senate next took up the bill for the relief of Don Carlos Dehault Delassus, (authorizing the payment of one thousand three hundred dollars, with interest from September, 1810; also, six thousand dollars, with interest; being for money taken from him at the capture of Baton Rouge, in West Florida, on the day and year before mentioned.)

The facts of the case were stated by Messrs. BENTON and RUEGLES, and some discussion ensued between Messrs. CHANDLER, BENTON, EATON, RUEGLES, WHITE, JOHNSTON, of Louisiana, JOHNSON, of Kentucky, and HARRISON, as to the propriety of refunding the six thousand dollars to Col. Delassus, as it was the property of the Government of Spain. It was urged, on the one hand, that, if there was any claimant, which was denied, all claim to indemnity having been relinquished by treaty, it was the King of Spain; on the other hand, it was alleged, that it was incumbent on this Government to place him, as nearly as possible, in the situation he was in before the attack took place, at which time he was the officer with whom the money was deposited, and that the treaty alluded to would not embrace this case.

The bill was finally laid on the table for the present.

WEDNESDAY, May 10.

*Illinois River and Lake Michigan Canal.*

The Senate then resumed the consideration of the bill to grant a certain quantity of land to the State of Illinois, for the purpose of aiding in opening a canal to connect the waters of the Illinois River with those of Lake Michigan; and the question being on the amendment proposed by Mr. KANE, to strike out all after the enacting clause, and to insert, "a quantity equal to three sections, on each side of the canal, from one end to the other, reserving to the United States — sections on each side of the same," &c.

Mr. CHANDLER entered into a calculation to prove that the value of the land, at the minimum price, would be between five and six mil-

lions of dollars. He therefore moved to fill the blank with 900, so as to reserve half the land for the United States.

Mr. HENDRICKS contended that this would amount to more than the whole grant.

Mr. CHANDLER then moved to insert 150; which was lost.

Mr. KANE moved to insert 10; which was carried, and then the question was taken on engrossing the bill for a third reading, and decided in the negative, as follows:

YEAS.—Messrs. Barton, Benton, Bouigny, Chase, Edwards, Harrison, Hendricks, Johnston of Louisiana, Kane, Marks, Noble, Reed, Robbins, Ruggles, Seymour, Smith, Thomas—17.

NAYS.—Messrs. Berrien, Branch, Chandler, Clayton, Dickerson, Findlay, Harper, Hayne, King, Lloyd, Rowan, Sanford, Tazewell, Van Buren, White, Williams, Woodbury—17.

The votes being equally divided, the Vice President voted in the negative, and the bill was rejected.

Mr. WHITE, from the Committee on Foreign Relations, made an unfavorable report on the case of sundry inhabitants of Philadelphia and Baltimore, praying remuneration for claims on the Spanish Government.

*Judicial System.*

On motion of Mr. VAN BUREN, the Senate proceeded to consider the report of the Committee on the Judiciary relative to the conference asked by the House of Representatives, on the subject of the Judiciary bill.

Mr. VAN BUREN said he would detain the Senate but a few moments. The report spoke the views of the committee; and, in deference to the House of Representatives, the resolution provided for its transmission to that House. The opinion of the committee was founded on two assumptions—first, that the appointment of conferees on the part of the Senate would be a waiver of its vote of adherence; and secondly, that a large majority of the Senate are opposed to such waiver. Although the books of precedents do not say expressly that the appointment of conferees, on the part of the House *adhering*, in effect rescinds the vote of adherence, yet such is certainly the good sense of the case; and it appears that the other House have asked the conference under that view of the matter. Were it not so, the conferees would meet on unequal terms. Upon the other point, the members of the Senate will speak for themselves. If they have any thing to yield, they will, of course, vote against the resolution; if not, the meeting of the conferees would be an unavailing ceremony. Mr. V. B. said, that he had understood that some objection had been made to the form of the amendment, so far as it relates to the residence of the judges. By the first section of the bill, the appointment of three additional Justices of the Supreme Court is authorized, and they are placed, to all intents and purposes, on the same footing with the present judges. In the

amendment, they are described as judges to be appointed for the three new circuits, and required to reside in their respective circuits. The bill from the House authorizes the President, in terms, to designate the circuits in which they are to serve; and the amendment does so by necessary implication. If the amendment of the Senate had been regarded as essentially objectionable, on that ground, it would have been in order for the House of Representatives to have amended the amendment; not having done so, he was satisfied that the objection was not regarded as entitled to as much weight as was by some supposed.

Fully satisfied that no good could be effected by a conference, he was opposed to it. He thought the danger of losing the bill would be increased by the measure. The bill was now in the other House. He could readily conceive that the members of that House, who were opposed to the amendment, might be disposed to send the bill here with a vote of adherence, in the hope that the Senate would yield, who would not vote to adhere if they knew that the success of their votes would certainly lose the bill. Convinced that the Senate would not recede, he thought it most advisable that the other House should act upon the bill with full knowledge upon the point.

Mr. V. B. said, that the committee had thought proper to notice the idea that, in voting to adhere, in the first instance, the Senate had indicated a want of respect for the other House. They had done so, because they had seen, with surprise and regret, that such construction had elsewhere been put upon the act. Nothing, he was certain, was farther from the truth. The Senate is incapable of treating, otherwise than with perfect respect and decorum, any other branch of the Government, and least of all could they be wanting in this respect to the House of Representatives. The temperance, not to say forbearance, which the Senate has, on more than one occasion during the present session, evinced, ought, he thought, to have saved it from the injurious supposition, that such could have been its motive. It is true that, in some of the ancient books of precedents, in the English Parliament, it is so considered; but it is equally true that the course now pursued, had been repeatedly pursued before, and had not heretofore received so unfavorable a construction. There is nothing in the nature of the act that calls for it. The committee had, however, thought it advisable to disclaim it, in behalf of the Senate. Mr. V. B. said, he would very much regret that the difference between the two Houses should cause the loss of the bill. He hoped that such would not be the case. But, if it should be otherwise—if the difference should prove irreconcilable, he saw no reason why the circumstance should occasion the least asperity or heartburnings between the two Houses. The question was one exclusively of a public character, totally disconnected, as far as he knew, from per-

sonal considerations of any description. If the two Houses viewed the public interest in different lights, it was their duty to adhere to the course which they respectively believed best calculated to promote it. Differences of that description were incident to all public proceedings, and the consequences, however much to be regretted, should be submitted to with dignity and moderation.

Mr. KING wished to explain the reason why he would vote against the adoption of the report. It would have been preferable, in the first instance, that the Senate should have insisted on the amendment, and have sent to the other House; then, if they thought proper, a Committee of Conference would have followed, as a matter of course: but, as the proposition had been made, to adhere, the other motion could not be made while that was pending; and, not being willing to yield the amendment made by the Senate, he had determined to vote in favor of adhering. That vote had placed the other House in this situation. They must recede, and the amendment would become a law; they must adhere, and the bill would be destroyed, or they must do what they had done—insist, and ask a conference. He would ask, whether it had not always been the case, that, when a conference was asked, it had been given to the other House, to explain their views, and, if there was any new light which could be thrown on the subject, the Senate might receive the benefit of it? Because, in the course of the discussion, reasons had been assigned, was it to be said they were not now prepared to give additional ones? He should vote for the conference, and if they refused to grant it, it might jeopardize the passage of the bill. He was anxious the bill should pass in some way or other; as a Representative, he wished to do, on all occasions, what was right; he deemed it right the amendment should prevail, and that the arrangement of the circuits should be such as the amendment made; yet, he was not willing, on account of some technical difference, or from some little responsibility, to risk the loss of the bill altogether. If the Senate did not show some conciliating spirit, the House might become excited, and adhere on their part; but, by evincing a conciliatory spirit, this body might bring about an arrangement which would be satisfactory to all, and which would allay the fermentation which had been attempted to be got up, and the bill would pass. He should therefore vote against the adoption of the report.

Mr. BENTON said he was pleased with the report, and entirely concurred with it. There was one question which he had advanced, which had never been answered, in the House or out of it: Was not the judge capable of doing the business in Ohio and Kentucky? This was the third time that he had presented the question in this point of view to the Senate; and he would ask some of the gentlemen who advocated the course pursued by the other

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House, to say whether or not the judge was capable of doing the business of those two States? That inquiry had never been met, here or elsewhere. With regard to treating the House with disrespect, he was glad the committee had noticed it in their report. It was due to the Senate that it should be repelled. He was not versed—he had no manual—he had access to no book on the subject of etiquette; but if things went on at this rate, it would be necessary to have a manual published, in which they might all learn how they should be respectful, or how not. In his idea, it was a new sense of the term disrespect, to charge the Senate with disrespect for doing a thing which it had a clear right to do, and which it had done in the usual form.

Mr. BARTON said there were but two questions involved in the amendment of the Senate to the Judiciary bill, sent here by the House of Representatives. One was, shall a judge be appointed for a circuit, and permitted to reside out of the circuit, only visiting it occasionally? To this question he answered, No; and had neither conference nor compromise to offer upon such a proposition. The other question was, shall the State of Missouri be subjected to the inconvenient attachment to Kentucky, in the formation of a circuit? To this question he answered, No; and had no compromise to make upon the question. For, although it was true that the north-western angle of Kentucky touched the south-eastern angle of Missouri, yet, for all practical purposes, there were two States lying between Kentucky and Missouri, during the greater part of the year, during which, steamboat transportation and passage were not to be relied on. Besides, there were long distances between the respective seats of Government in Kentucky and Missouri, and the points of embarkation in each, during the season of steamboat navigation on the Ohio; he should, therefore, upon such plain questions as those involved in the Senate's amendment, upon which he had nothing to give up, vote at once for the resolution of the committee, and, he again repeated, without the slightest feeling of disrespect for any individual or public body.

The question was then taken on agreeing to the report of the Judiciary Committee, and decided by yeas and nays, as follows:

YEAS.—Messrs. Barton, Benton, Berrien, Branch, Chandler, Dickerson, Eaton, Findlay, Harper, Hayne, Hendricks, Holmes, Johnson of Kentucky, Kane, Noble, Robbins, Rowan, Smith, Tazewell, Thomas, Van Buren, White, Williams, Woodbury—24.

NAYS.—Messrs. Boulogny, Chase, Edwards, Harrison, Johnston of Louisiana, King, Knight, Lloyd, Marks, Reed, Ruggles, Sanford, Seymour—13.

THURSDAY, May 11.

*Western Collection Districts.*

The Senate then took up the bill to establish certain Collection Districts in the States of Ken-

tucky, Ohio, Indiana, Illinois, and Missouri. [This bill creates three Collection Districts, Louisville, Cincinnati, and St. Louis, each of which shall be a port of entry, and contains various provisions relative to vessels arriving from foreign parts bound for these ports, and the restrictions under which vessels may break bulk at New Orleans, and transship a part of their cargo to ascend the Mississippi.]

Mr. LLOYD observed, that this bill was reported by the Committee of Commerce in consequence of a memorial from the merchants of St. Louis, which had been referred to that committee. They had consulted with the Secretary of the Treasury on the subject, who had concurred with them as to the propriety of granting the prayer of the memorial. The committee, Mr. L. said, were desirous of affording every facility to the trade of the Western country, but it must be considered as an experiment. The introduction of the right of breaking bulk at New Orleans, and shipping part of their cargoes in steamboats on the Mississippi, which would have to stop at a variety of places before arriving at the port of their ultimate destination, must be attended with some hazard to the revenue. If it gave rise to abuses, however, it could be remedied.

Mr. TAZEWELL said there would be a number of collection districts established. The collectors would have the same rights and powers as other collectors, and would be bound by the general collection law. Would there not, therefore, be a certain number of officers called into action, whether there was any thing to do, or not, whose salaries would come out of the Treasury?

Mr. LLOYD replied, that the amount of business to be done would be determined in a very short time. They would have to send in their accounts quarterly, and if abuses arose, they would be stopped. He acknowledged the bill was open to many objections, but if the Senate thought it would be too hazardous, they would not pass it.

On motion of Mr. HARRISON, the bill was, for the present, laid on the table.

FRIDAY, May 12.

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The Senate next took up the bill to regulate the publication of the Laws of the United States and of public advertisements.

Mr. BENTON said this bill was one of a series relating to the same general subject, which had been reported under a resolution submitted by a gentleman from North Carolina, whom he saw in his seat, (Mr. MACON.) That gentleman would take an interest in the discussion and passage of this bill, but, Mr. B. said, to his certain knowledge, that gentleman was unable, from indisposition, to take any part in the discussion. Under these circumstances, he, for one, thought it his duty to consult him. He was at the bottom of the whole affair; he had

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collected a variety of facts; he had matured the subject, and he thought it right that the wishes of that gentleman should prevail.

Mr. MAOON said the subject of diminishing of the patronage of the Executive, was one which he had reflected on for many years, but at this time he was unable to enter into the discussion of it; his health was at present so bad, that he would not be able to speak for ten minutes in succession. He should move, therefore, that the bill be laid-on the table; which motion prevailed, and

The same course was adopted with respect to the other bills relating to the same subject.

MONDAY, May 15.

*Dismal Swamp Canal.*

The Senate then took up the bill from the House for the subscription of stock in the Dismal Swamp Canal Company.

Mr. HENDRICKS (Chairman of the committee which reported the bill) made a general exposition of its object, and briefly advocated its passage.

Mr. CHANDLER said they had entered into every kind of speculation since they had been here, and now they were called on to enter into partnership with lottery venders and subscribers to stock companies, who had sacrificed one-half or two-thirds of their stock, and with the States of North Carolina and Virginia. It was said the report on the subject was too long to be read. If that was the case, he thought it was too late in the session to act on the subject at all. The gentleman from Indiana had called on the gentlemen from North Carolina and Virginia, to make any explanations that should be called for as to the nature and utility of the work; but Mr. C.'s object in rising was, to ask the Chairman of the committee whether the stock had not once been fully subscribed for?

Mr. TAZEWELL said he should vote against this bill. He had done so on a former occasion, and he should continue to do so as long as he lived, and against every other bill of a similar kind, come from what quarter it might. He did not think that this Government possessed the authority, in any form, manner, or shape to expend the public money in furthering this, that, or the other project; and though this money was to be applied at his own door, and in his own State, he must vote against it. It came across his principles, and those he could not sacrifice to promote his interest; but as he had been called on by the Chairman of the Committee on Roads and Canals, he felt it a duty he owed to the people he represented, and to those who had this business at heart, to eke out the statement which the gentleman from Indiana had made from the documents before him.

Immediately after the Revolutionary war, (said Mr. T.,) the active mind of him who, by common consent, was placed at the head of all the citizens of this country, as soon as he was relieved from the toils of war, employed itself

in looking over the map of his own country, and of his own particular State, to devise the ways and means by which its prosperity might be advanced. In this view, he proposed, in a written communication to the State of Virginia, in 1784, to make the Potomac River navigable, from the head of tide water to the utmost point where its navigation was practicable, and the same with James River; and to connect the waters of James River with the waters of Albemarle Sound, by canals. The first subject was accomplished at once: because the whole territory lying in the State of Virginia, required no other aid or concurrence. His recommendation was attended to; and, in pursuance of it, as far back as 1786, laws were passed authorizing the construction of the Potomac and James River canals, which were afterwards carried into effect. The canal now in question extends half its length into North Carolina, and it required, therefore, the co-operation of the two States, and Washington's influence was exerted to procure the enactment of the law out of which it grew. The law authorized a canal of very limited dimensions, to connect the great waters of North Carolina and Virginia; and that law received the concurrence of the Legislatures of both these States. At that time (Mr. T. said) we were in our infancy as it regarded canals. The sum necessary to accomplish this great work, of twenty-two and a half miles, was estimated at \$80,000, which was subscribed for in North Carolina and Virginia. There was no such thing as a civil engineer in America, and some military engineer was picked up to cut the canal; a man who had never seen one constructed in his life, and was perfectly ignorant of the subject. He projected it, and they commenced it in utter ignorance of every thing concerning such works. They finished the cut with the \$80,000, and the tolls which were received while the canal was in operation. But, when it was finished, they had got a ditch of eleven feet wide, and one foot deep, which foot, in summer time, was frequently diminished, by evaporation, to six inches. They were occupied ten years in cutting this ditch. So soon as it was finished, or before it was finished, it was found, by survey, by some persons who were a little better acquainted with the matter, that, immediately west of the canal, at two miles distance from it, there lay the best feeder in the world, a lake which was seven miles long, five miles broad, and of extraordinary depth. This lake was found to be at an elevation of seven feet above the surface of this canal, and twenty-two feet elevation above the tide water. At this time the money was all expended. Application was again made to the Legislatures of North Carolina and Virginia to authorize an additional subscription to the stock. An additional subscription of \$40,000 or more, was, accordingly, made by individuals, and some portion by the State of Virginia itself. He was not sure, however, that that was the case. This money was expended in the repair

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of some wooden locks which had been constructed in the course of the excavation of the canal, and which rotted once in ten years. Still the canal was only eleven feet wide, and one foot deep. Things remained in this state, until the late war with Great Britain. The Chesapeake was then blocked up, and the only outlet was through this canal, and the whole of the tobacco, and every article of export in Virginia, was carried through it into the waters of North Carolina, which nature has proclaimed shall never be blockaded by any enemy. Vessels, coming from Richmond, and other parts, arrived at Norfolk, discharged their cargoes into open boats, which went through this canal to ports in North Carolina, and thence were shipped to every part of the world. The magnitude of this trade and the importance of this canal, had attracted considerable attention. The original \$80,000 were gone; the \$40,000 afterwards subscribed were all gone; the new stockholders were not permitted to come in on the same terms with the old ones, and they refused to come in on any other. In this state of things the board of public works, of Virginia, was authorized to take two-fifths of the whole stock, and subscribed the remaining three-fifths of the stock. With this fund they cut a feeder two miles long, giving them the command of the canal; and they opened this canal to a width, on the surface line, of fifty feet, and at the bottom of thirty-two feet, with a depth intended for six feet, but, for some reason, was only made five and a half feet. The tolls received in the mean time had been applied to the erection of stone locks. There were, originally, twelve wooden locks, which are now all done away, and there are three or four stone locks, and finer pieces of masonry I never saw in my life. The money the State subscribed has been applied to widen the canal. There were required stone locks where wooden ones existed at the southern outlet, and a cut of 200 yards, to change the place of disembogement, because a better site for the foundation of a stone lock can be found than now exists. The funds are not provided, and, if they depend upon the tolls of the canal to raise these funds, they would not be forthcoming for some years, owing to the expenses of the canal. This (Mr. T. said) was the history of the origin and progress of the work, as far as he knew any thing about it.

This canal, Mr. T. said, was to be considered in a national point of view. By a reference to the map it would be seen that, from the mouth of the St. Mary's River to the mouth of the Pedee, there is everywhere a chain of islands, leaving soundings which are navigable; a canal made by the hand of nature which is perfectly navigable. At the mouth of the Pedee the island ceases; it there becomes necessary to enter this great river; ascending its southern branch, you come within eight or ten miles of the navigable waters of Cape Fear in North Carolina. This is over a champaign country where there is not a single rock of any kind, and nothing

but the roots of trees to produce any difficulty in the excavation; you ascend the nearest mouth of Cape Fear, and there approach within two miles of that chain of sounds which extend northwardly to the State of Virginia. A canal of two miles, Mr. T. said, would connect the waters of Cape Fear with the first of these sounds; and he proceeded to show the facility of effecting a complete interior navigation throughout, to Albemarle Sound, and thence to the mouth of the Dismal Swamp Canal now under consideration, twenty-three miles in length, which connected Albemarle Sound with Hampton Roads in Virginia. You then, continued Mr. T., ascend the Chesapeake Bay and come to the mouth of the Chesapeake and Delaware Canal; through this you enter the waters of the Delaware, ascend to Trenton, and enter there the Delaware and Raritan Canal; by this means you get to New York; you pass up Long Island Sound to Providence, Rhode Island. Wherever else the canal may go, said Mr. T., I know not, but from there to St. Mary's River, in Georgia, there are only the insignificant obstructions existing which he had described. The high lands which separate the waters which fall into the Hudson from those that fall into the Delaware; those that separate the Chesapeake from the waters of Albemarle Sound; those separating Cape Fear from South Carolina, and on to St. Mary's in Georgia, a distance of one thousand miles, required canals of something less than sixty miles altogether. Of this chain, said Mr. T., the Dismal Swamp Canal is a link, which has already been completed to the extent I before stated. Another link is the Chesapeake and Delaware Canal, for the completion of which Congress voted the same sum of money at the last session, as is now proposed for this canal. It will be completed in the course of the ensuing year. The link connecting the Delaware and the Hudson is now in train, but, Mr. T. said, he did not know what progress had been made in it. It was a fact, that, during the last summer, a vessel came from New York, passed through this canal in its present situation to North Carolina, took in her load, and made her return voyage. This, Mr. T. said, was the history and progress of this canal. He had done his duty in submitting it, but, inasmuch, as he conceived that Congress had no authority to exert this power, he could not vote for it.

Mr. BRANCH, of North Carolina, said this work was a most important one, and was connected with a power already exercised by Congress; for without this, efficiency could not be given to the fortifications; it was through this canal supplies were to be furnished which were to give efficiency to the fortresses at the Rip Raps and fortress Monroe, and should he, from a little squeamishness, deny to his people a participation in the feast which had been prepared out of their money? The money of the State of North Carolina had been taken, and often, by those very men, who now tendered him this lit-



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tle bone; for it was nothing but a bone to pick. The State of Virginia was more interested in this work than the State of North Carolina, perhaps more than any State in the Union, and those men who had taken the money of his people, and had applied it to objects of a different character, were now tandering him a small boon by way of return. If he should accept it, should he be compromitted by his vote; should he be bound to acquiesce in any violation of the rights of his people hereafter by the vote he should give now? Mr. B. said he was an advocate for the equal and impartial distribution of the resources of the nation; therefore, it was that he had agreed with zeal to the proposition of the gentleman from New Jersey. The State of North Carolina had received no returns for the money she had been pouring into the coffers of the nation. Mr. B. then entered into some further statements in relation to the importance of the canal, and said he could not suffer a morbid sensibility to prevent him from accepting this boon, the first which had been offered by those who had taken his people's money.

Mr. NOBLE, of Indiana, said he labored under some difficulties in relation to this subject, but they were not constitutional ones; for his course had always been uniform on that subject. In relation to the subject of internal improvement, it was an object that ought at all times to be promoted, when it could be done without being burthensome to the people; yet, while he made this avowal, he must be permitted to say he labored under a degree of embarrassment in voting for the appropriation of a sum of money for making canals within the Commonwealth of Virginia when the Senator from that State told them he was opposed to it from principle. Mr. N. said that being raised at the handle of the plough, and not having had it in his power to qualify himself to discriminate so well as many gentlemen could do on the subject of giving constructions to the constitution, he felt somewhat embarrassed by the speech of the gentleman from Virginia. He loved the man who would give him information that should lead him to the path that would promote the interests of the people he represented; but he did not wish to impose on the State of Virginia this appropriation of money against her will. He saw a difference if not a contradiction of sentiment on the subject. I hear it advanced on this floor, said Mr. N., that the Executive officer wished to assume to himself power, and extend his arm over the whole creation, because in his message, while we have ten millions of people, he had recommended an exploration of the Northwest coast of our Continent; yet, when I look back to the time of Jefferson, when we had only half the number of people, I find that he had sent without censure an exploring party to the Pacific Ocean. When I hear and see such contradictions, what, said Mr. N., am I to believe? The constitution was the same then as it is now. Am I to be led into this vortex? When

I go back to the forest which gave me birth, what am I to tell the people of that country? I will tell them facts. I came here for that purpose, and I will go back for that purpose. If any man who has administered this Government, has sinned less than another against the Constitution of the United States, it is John Quincy Adams; and if there is embarrassment in our way on the ground of the constitutional question, let truth be our guide, and let it be spoken throughout the country. Mr. N. said he wanted to come to some conclusion; and, as he had said on a former occasion, let the line of demarkation be drawn. Mr. N. then said he should turn to the Journal of the preceding session, and read a passage which the gentleman from Virginia could explain. That gentleman, said Mr. N., has satisfied me; he has taken me along with him like a torrent; he cannot only split hairs, but he can quarter them; his mode of reasoning has such a powerful effect on my mind that I am ready at all times to conform to his views. [Mr. N. then read from the Journal the amendment offered by Mr. TAZEWELL to the bill for the subscription for stock to the Chesapeake and Delaware Canal, at the last session of Congress, proposing to subscribe for so many shares in the Dismal Swamp Canal Company; which amendment was rejected.]

Mr. TAZEWELL rose to set the gentleman from Indiana right. When the bill for appropriating a sum of money for the Chesapeake and Delaware Canal was up at the last session, it was argued by the Senator from Delaware, (Mr. VAN DYKE,) that this canal was one link of the great chain to connect the Southern with the Eastern country. Therefore, Mr. T. said, he offered the amendment to the bill, stating that this was another link in the chain, and, while they were providing for the chain, they might make two links instead of one. I was asked, said Mr. T., by the Senator from Delaware, if he agreed to the amendment would I vote for the bill? I replied, that I would not, in any shape in the world; take my amendment, and I will vote against the whole bill; reject it, and I will vote against the bill. It was rejected, and if the gentleman will turn over the next leaf of the Journal, he will find my name amongst the nays. I never did vote for a proposition of the kind, and, so help me God, I never will.

Mr. KANE, of Illinois, said it was with reluctance he said any thing on the subject; but he was anxious that the vote he was about to give, should not be viewed in the spirit of retaliation. He had difficulties on this subject of a constitutional nature. Immediately after the vote on the Louisville and Portland Canal bill, the idea occurred to him that he ought to have inquired before he gave his vote as to this fact. Did the act of incorporation authorize the subscription of stock, on the part of the Government of the United States, or any Government, whatever? If the act of incorporation of the State of Kentucky in that case, and of the State

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of Virginia, in this, did not give the authority to receive the United States subscription, he would ask whether the act on the part of this Government, did not subvert, in a great measure, the power of these States over their corporations? Corporators are under liabilities, as well as individuals; they may do acts which will be a forfeiture of their charter. Supposing, then, the Government of the United States should acquire, by any means, a majority of the stock, and do acts, which, if done by individuals, would subject them to a forfeiture of their charter, what a state of things would be produced between Virginia and the United States! He apprehended that no remedy could, in such a case, be applied by a resort to legal tribunals; and he quoted decisions of the Supreme Court, and argued, at some length, to show the force of this objection. The Government of the United States, he said, would be a partner in this corporation; the Government of the United States could not be sued; one of the individuals composing the corporation not being liable to be sued, no suit could be entered in the Supreme Court of the United States. Mr. K. said further, that he did not believe that the Government had the power, except in cases of most evident necessity, of exercising the right of improving within the limits of a State, without the consent of the State. What should be the evidences of that consent, he would judge for himself. If the Representatives of the State, on this floor, advocated the bill; and if from the evidences which history furnished, he believed that the State consented to the measure, his objections would be done away. This was not the case here. The State of Virginia by her Representative, protested against the exercise of this power; and had Congress the power to inflict this canal on her without her consent? It seemed to him they had not.

Mr. VAN BUREN said he rose principally to call for the yeas and nays; but while he was up, he would make one remark on the subject. He could not vote for this bill, for he did not believe that this Government possessed the constitutional power to make these roads and canals, or to grant the money to make them; but, while he entertained this opinion, he did not wish to indulge in feelings of asperity towards those who differed from him. It was a subject not free from excitement, especially so far as the power to grant money was concerned. Different views were taken of this subject, by persons who were pure and honest; and, Mr. V. B. said, he should take the liberty, which, perhaps, he had no right to take, to express his regret, that in the course of the discussion on this question, such feelings had been drawn forth, as had been witnessed on the present as well as on former occasions. There were no two gentlemen on this floor, who placed more unqualified confidence in each other's integrity, than the gentlemen from Maine and North Carolina; still, from the misapprehension of a few words used in debate, these feelings had been drawn

forth. It was their duty to avoid such feelings. He acquiesced in the opinion, that there was no State in the Union which had received so little notice, as the State of North Carolina; and, Mr. V. B. said, where he could do it, consistently with his view of the constitution, he would with the utmost cheerfulness contribute his support to any project to assist that State; but on this occasion he could not do it. At the same time he must say, that, if he believed it in the power of the Government to grant money for this purpose, the present mode would be the last one he should think of adopting. If there was any grant of money at all for this purpose, it should be direct. Where aid was granted in the mode now proposed, abuses would creep in, and in nine cases out of ten, deception would be practised. In the State of New York they had had, Mr. V. B. said, full experience of this, in the application for charters for banks; plausible pretences were set up that the State would be thereby benefited, till these practices became so numerous, that in the end public opinion was decidedly against them, and the Legislature, to her honor, at the last session, had refused all applications of this description. So it was with Congress: they would proceed from one thing to another, till many millions of the public money were thrown away on disadvantageous projects, and they would finally come to the same conclusion which the State of New York had arrived at. When an individual subscribed for stock, he had a personal, a direct interest, which induced him to move with caution, and to see that his interests were properly attended to, and he would not embrace any wild scheme. Would any man believe that the United States would be benefited by the Louisville and Portland canal? Every gentleman on this floor believed it to be a useless concern; it was nothing but a cover to give money in this form which could not be given directly; and now they were called on to subscribe for stock in the Dismal Swamp canal, giving to the existing stockholders the money of the United States, to reimburse them for the money they had expended on a bad concern. Did this line of conduct comport with sound policy? He hoped the gentleman from North Carolina would not be discouraged; public opinion on this subject was taking the proper direction, and in the end this assumption of power on the part of the Government, would be put down, or there would be a salutary amendment to the constitution to provide for an equitable and fair distribution of the funds of the Government for this purpose.

[A short explanation then took place between Messrs. CHANDLER and BRANCH, and then]

Mr. ROWAN rose to tell the gentleman from New York, (Mr. VAN BUREN,) that there was one gentleman on this floor who had been led to believe, that the stock of the Louisville and Portland canal was profitable. Mr. R. said he might be deceived, but he would tell the gentleman that scientific and calculating men from the east and the north had believed it to be

profitable, and had sent their money there to be invested. The gentleman from New York had asserted that he did not believe there was a member of the Senate who believed that that stock would be profitable. Mr. R. did believe in his conscience, and from all the information he had been able to procure, that it would be advantageous, and some of the most cautious men in America had invested their money in it. Mr. R. said he thought the gentleman from New York might as well have waited till events should furnish the proof, and not take it for granted that the stock of that canal would be unprofitable.

Mr. CHAMBERS, of Maryland, said he thought this was a question on which the Senate of the United States were determined. All departments of the Government had acted on it, and the principle was settled, that the Government had power to appropriate money for internal improvement: the question was also settled as to the particular mode recognized by this bill. Mr. C. said he should beg leave to assert, that he never had, nor never would pursue the policy which gentlemen intimated had been pursued by those who formed the majority on this question. He believed, that in voting on this question, it was for the interest of the United States; if he did not so believe, he would not vote for it. If by the phrase, "important to the interest of the United States," the gentleman from New York alluded to the annual revenue the subscription would produce, he might, perhaps, agree to his proposition that it was not important; but, when they were told that this canal was necessary for the defences of the country, to secure the interests of the agriculturist and merchant, and every part of our population, was it to be said they were not to protect the interests of all these valuable classes of people? Mr. C. said when individual gentlemen from a particular section of the country were appealed to for their knowledge of facts, more especially in their possession; if, in giving the result of their observation and experience, they expressed their conviction that the designed improvements would not be productive of any good, the utmost deference ought to be paid to their opinion; and, if the gentlemen from North Carolina and Virginia would rise from their seats, and say that this appropriation was to accomplish an object which would not be advantageous to the interests of that particular section of the country, or to the United States at large, Mr. C. said he would give a different vote from the one he had intended to give. In this respect, the opinions of the gentlemen were entitled to great weight; but, Mr. C. said, when they differed from the course he meant to pursue on abstract legislation, or constitutional grounds, for the decision of which every man in this body must consider himself bound to himself, the opinions of those gentlemen were not entitled to more weight than those of any other individuals.

Mr. VAN BUREN regretted he was not so fortunate as to make himself understood. It was

proposed that the United States should subscribe for a portion of the stock, and so place herself in the same relation as individual stockholders. His objection was, that this was bad stock, and a losing concern. If that was the case, and there were other reasons why the United States should benefit this company, it should be done by voting money directly. The gentleman from Maryland had said, there might be other advantages arising from this canal; it was necessary for the support of the forts, and the general interests of the United States would be promoted by it. Then, Mr. V. B. said, his objection would apply; they should give money directly for these purposes, that their constituents might know, not only the purpose for which it was to be applied, but the extent also; and not go the round-about way of promoting the public interest by becoming stockholders. As to the question being settled, he should protest against the admission of such a doctrine; and he should resist, to all intents and purposes, the idea that the acts of this Congress were to bind him, or his constituents, hereafter.

The question on ordering the bill to a third reading, was finally determined by yeas and nays, as follows:

YEAS.—Messrs. Barton, Boulogny, Branch, Chambers, Chase, Eaton, Edwards, Findlay, Harrison, Hendricks, Holmes, Johnston of Louisiana, King, Lloyd, Marks, Noble, Robbins, Ruggles, Seymour, Smith, Thomas—21.

NAYS.—Messrs. Bell, Berrien, Chandler, Dickerson, Harper, Hayne, Kane, Knight, Macon, Reed, Rowan, Sanford, Tazewell, Van Buren, White, Woodbury—16.

So the bill was ordered to a third reading, and was then read a third time, PASSED, and returned to the House of Representatives.

TUESDAY, May 16.

#### *Graduation of the Price of Public Lands.*

On motion of Mr. BENTON, the Senate then took up the bill to graduate the price of the public lands.

The bill having been read, Mr. BENTON rose, and addressed the Chair as follows:

Mr. President: This is not a new bill, presented for the first time to the Senate, but one which I have annually brought in for three successive sessions. Circumstances have prevented me heretofore, from discussing its merits before you; but the vote which you have just taken, convinces me that the great majority of this body is willing to hear me, and I shall endeavor to acquit myself worthily of their indulgence, by the plain, brief, and common-sense manner in which I shall treat the subject. It is a subject of great moment to this Confederation, and worthy the most anxious deliberation of this Senate, whether we consider the value of the property to be disposed of, or the political consequences of permitting it to be held and wielded by the Federal Government.

The bill which I have introduced, contains

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two very plain and distinct principles; the *first* presenting a proposition to sell off the best of the land for prices adapted to its value; and the *second* contemplating a plan for the gratuitous donation of the remainder. I think, Mr. President, that these principles, under some modification, ought to be adopted; and I flatter myself that I can demonstrate the propriety of adopting them, whether the lands are to be considered as a source of revenue, or as a means of increasing the wealth and population of the country. The first would be the view of a mere financier, the second would be that of a statesman; and, as I mean to support my bill in both characters, I shall proceed to consider it, in the first place, as a mere revenue measure.

I then lay down the proposition fairly and boldly, that, as a mere scheme for raising money out of the public lands, the first principle of my bill ought to be adopted; and, in proceeding to maintain that proposition, I shall go back to the acquisition of these lands by the Federal Government, show the object for which they were acquired, and shall examine the manner in which that object has been pursued or neglected.

The public lands were acquired from two sources: the cessions of particular States, and purchases from France and Spain. The quantity thus acquired, and now lying within the limits of States and Territories, may be estimated at 240 millions of acres. The cessions from the States were made for the declared object of paying off the debt of the revolution, and with a stipulation to erect the ceded territory into sovereign States, with all the rights and powers which belonged to the original members of the Confederation: and the purchases from France and Spain were made under the stipulation, secured by the faith of treaties, of erecting the purchased territory into like sovereign, equal, and independent States. In both cases the Federal Government was nothing but a trustee, and bound by compacts and treaties to dispose of the lands according to the terms of the trust. The cessions by the States were made at the close of the Revolutionary war; the purchase from France, about a quarter of a century ago; and that from Spain, in the year 1819.

The first acts of the Congress of the Confederation, with respect to these lands, were faithfully directed to the object for which they were intended. The ordinance of '85 fixed their price at one dollar per acre in certificates of the public debt; directed them to be divided, as fast as surveyed, into thirteen portions, according to the quotas of the States in the last requisitions; distributed by lot among the different States, and offered for sale at the courthouse of every county. This ordinance was a faithful exposition of the views of the States, in making the cessions, and a fair acknowledgment of the obligation incurred by the Federal Government in accepting them. The mode of selling the lands was also eminently just and

wise; but the intention of the ordinance was defeated by the monopoly which had been effected of the certificates of the public debt. These certificates were no longer in the hands of the soldiers who had fought the battles of the country, or of the farmers who had furnished support to the armies. They were in the hands of speculators, who had purchased them up at an average of two shillings and sixpence in the pound, and wished to convert them into a public debt, at twenty shillings in the pound, drawing an annual interest of six per cent. These speculators resided chiefly in the great cities, and Congress, finding that no sales could be effected at the county court-houses, directed them, by a subsequent ordinance, to be held at Philadelphia, New York, and Boston; but without better success than before. The speculators would not take the lands, but relied upon their interest in Congress, in accomplishing their favorite object of funding their certificates at eight times as much as they had given for them. Thus passed off the time from '85 to '89; Congress endeavoring to pay the public debt with the public land, and the holders of the debt endeavoring to have it funded. The Federal Government, under the new constitution, went into operation in the midst of the struggle, and the Executive Government faithfully pursued the plan of the Congress of the Confederation. The first and second messages of President Washington were directed to this object, and he strongly recommended a sale of the lands to pay off the *principal* of the debt.

Doubtless it will be agreeable to the Senate to hear the words of that great man, and as I wish to avail myself of his authority in the support of my bill, I will here read the passages to which I have referred.

#### *Message of 1790.*

"Allow me, moreover, to hope that it will be a *favorite* policy with you, not merely to secure a payment of the *interest* of the debt funded, but as far and as fast as the growing resources of the country will permit, to exonerate it of the *principal* itself. The appropriations you have made of the Western lands, explain your dispositions on this subject; and, I am persuaded, that the *sooner* that valuable fund can be made to contribute, along with other means, to the actual *reduction* of the public debt, the more salutary will be the measure to every public interest, as well as the more satisfactory to our constituents."

#### *Message of 1791.*

"A provision for the sale of the vacant lands of the United States is particularly urged, among other reasons, by the important considerations that they are pledged as a fund for reimbursing the public debt; that, if *timely* and *judiciously* applied, they may save the necessity of burdening our citizens with new taxes for the extinguishment of the *principal*; and that, being free to discharge the principal, but in a limited proportion, no opportunity ought to be lost for availing the public of its right."

These two extracts show the policy of Washington, his policy to reduce the *principal* of the debt, and to make the public lands subservient to that object, by "*timely*" and "*judicious*" sales.

The report of General Hamilton, his Secretary of the Treasury, made at the same time, may be considered as an amplification of the message, and the correct expositor of President Washington's idea of *timely* and *judicious* sales. This report recommends the immediate sale of the lands, at their then value, and fixes that value at an average of twenty cents per acre. The following extract conveys his sentiments in his own words:

*Report of 1791.*

After reciting that the public creditors are offered one-third of their debt in land, at twenty cents per acre, and an interest of six per cent. on the remaining two-thirds until paid, the report proceeds:

"The creditor is offered the advantage of making his interest principal, and he is asked to facilitate to the Government an effectual provision for his demands, by accepting a third of them *in land at a fair valuation.*

"The general price at which the Western lands have been heretofore sold, has been a dollar per acre, in public securities; but, at the time the principal purchases were made, these securities were worth, in the market, less than three shillings in the pound. The nominal price, therefore, would not be the proper standard, under present circumstances; nor would the precise specie value then given be a just rule; because, as the payments were to be made by instalments, and the securities were, at the times of the purchases, extremely low, the probability of a moderate rise must be presumed to have been taken into the account. *Twenty cents, therefore, seems to bear an equitable proportion to the two considerations of value at the time, and likelihood of increase.*"

Here, then, is the plan of Washington and Hamilton, a plan which contains the true principle of action for every debtor, whether a nation, or an individual. They proposed to pay the *principal*, instead of piddling at the annual interest, of the debt, and to sell the land at once, for what it was worth, instead of holding it up for a future and indefinite rise. But the plan of these great men did not succeed. It met a vehement opposition, both in and out of Congress. The speculators in certificates, and the political enemies of General Hamilton, combined to attack it. They represented it as a prodigal waste of the public lands, to sell them at an average of twenty cents an acre, when, by holding them a few years, they would rise to a great price. They urged the advantage of paying the annual interest of the debt, until this great rise should take place. They set up loud and piteous lamentations in favor of the poor, whom they represented as destined to remain forever the tenants and vassals of the speculators who would monopolize the lands at such low rates. They excited the

jealousy of the old States, by showing them their population drawn off to the West; and they affected great concern for the injury which would be done former purchasers who had given one dollar per acre. In short, they prevailed. The mass of the people were deceived and imposed upon, and a powerful party in Congress, in favor of converting two and sixpence in the pound, into a national debt at twenty shillings in the pound, obtained the complete ascendancy over the policy of Washington and Hamilton. That party prevailed. They prevented the sale of the land, according to the recommendation of these great men. They procured twenty-five millions of their certificates—certificates which had been got for a song from the people—to be converted into national debt, at twenty shillings in the pound, and six per cent. interest. Having done this, their next object was, to make the debt perpetual, by limiting the sales of lands to as much as would pay the annual interest. To accomplish this purpose, the price of land was raised to two dollars per acre, in gold and silver; the law which permitted evidences of the debt to be taken in payment of land, was repealed altogether; the net proceeds of the lands were pledged, by themselves, to themselves; and the people were unblushingly told, that a national debt was a national blessing, because it would create a powerful moneyed interest, to support the Government.

Such are the facts, Mr. President, relative to the origin of the present system of selling public lands. Such were the actors, such their motives, and such their merits, in the establishment of this system. Having displayed these, let us next look to the fruits of the system—let us see what the people of these States have gained by paying interest upon the debt, and waiting for the rise in the price of their lands. I hold those fruits in my hand (showing a paper), and I will present them to the Senate.

One hundred and thirty-six millions of dollars paid in interest! Twenty-six millions received from the sales of public lands! The debt increased instead of diminished: for it was seventy-six millions at the end of the Revolution, and it is eighty millions now! And the lands which were to rise in ten years to four and eight dollars an acre, are remaining unsold at one dollar twenty-five cents! But even the amount of interest paid, or the greater part of it, had to be collected from other sources. Look to the table. In no one year was more than half enough received from the sales of land to meet the interest of that year; seldom more than one-fourth; at present not one-fifth; and the amount annually decreasing; and still we have advocates for the continuation of this ruinous policy; men who look forward to the rise, and want us to continue, I presume, for another half century, the experiment of a system under which we have already paid the amount of the principal twice over, in

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annual interest, without diminishing the principal one dollar; under which we see the best of the lands dribbled and piddled away without accomplishing the object for which they were ceded to the Federal Government, or being felt among the resources of the nation. I trust, Mr. President, that we shall not be guilty of this improvidence; I trust, that after fifty years' experience, and the loss of one hundred and thirty-six millions of dollars, we are brought to a condition to listen to the venerated voice of Washington, and to go to work in earnest at selling off the land for what it is now worth, and paying off the principal of the public debt instead of wasting that great fund in the payment of annual interest. It is, indeed, a great fund, and capable, under a judicious administration, in conjunction with the sinking fund, of extinguishing the public debt in eight years. I say eight years! and prove it like a proposition in mathematics. Our debt is eighty millions of dollars, and the sinking fund is ten millions. Now it is just as plain as that two and two makes four, that the sinking fund should extinguish the debt in eight years, if its whole amount could be applied to the principal; but about one-half is absorbed in the payment of interest. Let the interest, then, be raised from the lands, while the duties on imports furnish ten millions for the sinking fund. The lands amount to two hundred and forty millions of acres, and if so disposed of as to raise the interest of the debt for eight years, the sinking fund would extinguish the principal in that time. The amount to be raised, supposing ten millions of the principal to be annually extinguished, would not exceed twenty millions, and surely the sales could be so managed, as to raise that sum in that number of years. Here, then, is a paradox. I maintain that it is better economy to sell the lands, or the best of them, in eight years, for twenty millions, than to sell them in the progress of ages and centuries for three hundred millions. One would enable us to get rid of the debt; the other would not. The lands were ceded to the Federal Government to pay the debt. In fifty years they have paid no part of it, not even the one-fifth part of the interest. In fifty years to come they can do no better if administered in the same way; but in eight years they will extinguish a debt of eighty millions if the present ruinous system is abandoned, and a new and judicious one adopted.

I propose, then, to accelerate the sales, and to raise twenty millions in eight years. How is this to be done? By letting the land go for what it is worth—by selling for the present value—instead of waiting for a future, distant, and uncertain rise. There are several ways to accomplish this object. One of these would be to abolish the *minimum* price, and sell all the lands off-hand for what they would bring. This mode is not recommended, for reasons too obvious to need enumeration. Another would be, to class and appraise the lands, reserving

the two first classes for sale, and surrendering the third to the States. The third mode would consist in letting the lands class themselves, as proposed by the bill now under consideration.

This bill proposes successive annual reductions of twenty-five cents per acre, until the price is reduced to twenty-five cents, when the refuse would be subject to gratuitous donation. Its operation would be to quicken the sales, to infuse new life and animation into them, and to sell more in five years than would be sold, under the present system, in as many ages. A district would be sold out in five years. Each tract would find a bidder, as it fell from one price to another, until it got to its true value. The fear of losing it by the purchase of another person, and the idea of being given away as a donation, would compel those who wanted a tract, to buy it as soon as it got to its real value. At present, people do not purchase the second and third-rate lands, because it is absurd and contradictory to give the same for that kind as for the first rate.

No man will give one dollar twenty-five cents for a quarter section that has but one-half, one-quarter, or one-tenth part of it fit for cultivation; or which is only desirable for the timber upon it, or for a spring, or a quarry, or a place for building, or which might be wanted for the mere purpose of keeping off too close a neighbor. People will not buy such inferior tracts at one dollar twenty-five cents; for that would bring the little good land which it contains, to eight or ten dollars an acre. They will not buy, because they know that nobody else will, and that they can buy it ten or twenty years hence, and, in the mean time, have the use of it without paying taxes. I say, have the use of it; and this refers to the timber it may bear: for it is notorious that the public timber is used as common property, and that no blame or censure attaches to the practice. Statutory enactments are unavailing when unsupported by the moral sense of the community for which they are intended. The Federal Government has its statutes upon this subject; but they are no protection to the land—they are nothing but instruments of revenge in the hands of neighbors, who fall out and quarrel with one another, and commence the "unprofitable contest of trying which can do the other the most harm." But, in general, there are none to inform, or to bear witness. Whole neighborhoods are in the same predicament. By common consent they go and take timber from the public land, and let their own stand for a future occasion. In the level countries they often go five miles; and on the banks of the great rivers, immense numbers make a regular business of cutting large rafts, and floating them off to market, even to New Orleans, at a distance of five hundred or a thousand miles. Thus, those who please have the benefit of the land, without the payment of tax or purchase-money. Thus the inducement to purchase is destroyed. Thus is accounted for the notori-

ous fact, that the sales are declining; that we are receiving less and less every year, and that the Registers and Receivers, in most of the districts, do not receive as much for their commissions as would compensate them for the loss of their time; and yet the system costs the Government upwards of 83½ per cent. on the amount collected. The salaries, commissions, surveys, contingencies, &c., are upwards of \$300,000 per annum; the receipts into the Treasury are only about nine hundred thousand; and thus is presented the anomalous fact, that, in the operation of the most enormously expensive system of revenue that ever was heard of, the principal officers who administer it cannot live upon their compensation. Look to the document which has been laid upon your tables. See Registers and Receivers, whose commissions are, in many instances, less than one hundred dollars per annum, and very few exceeding twice or thrice that sum. Look, also, to the table of lands sold, and remaining unsold, in the different States and Territories, and see how slowly the system proceeds. Take, as an example, the oldest and most populous districts of the oldest and richest of the new States, and see how little has been done towards completing the sales.

Thus far, Mr. President, I have considered the bill before you in a mere financial point of view. I have discussed it, as a revenue measure, and, under that aspect, which is not the most favorable which it wears, I have demonstrated the advantage of adopting its principles. But I should be false to myself, and to the place in which I stand—I should be false to the character of Senator, with which I am clothed, and which should include the character of statesman—if I should suffer the bill to go off under this limited and contracted point of view. Far from it. A wider horizon opens before me. Consequences far superior to the accumulation of dollars in the Treasury; consequences even superior to the honor and advantage of paying off the public debt, present themselves to my vision. I see, in the adoption of this great measure, consequences which connect themselves with the durability and prosperity of this Republic—the number of tenants diminished; the class of freeholders increased; the multiplication of that class of population which is to pay taxes, bear arms, defend the country against foreign and domestic enemies, and to furnish the future statesmen and warriors of this Republic. These are the grand advantages which are to result from a distribution of the soil among the children of the country: and, happily, I speak to those who understand and anticipate me. I speak to statesmen, and not to computing clerks; to Senators, and not to *Quæstors* of provinces; to an assembly of legislators, and not to a keeper of the King's forests. I speak to Senators who know this to be a Republic, not a Monarchy; who know that the public lands belong to the people, and not to the Federal Government;

who know that the lands are to be “disposed of” for the common good of all, and not kept for the service of a few; and knowing that I speak to such enlightened men, I feel my labor abridged, and my task anticipated. The American Senate is not the place for the illustration of truisms. Senators who have passed their lives in the administration of the public affairs, whose minds are trained to the induction of truth, need no elaborate discussion of great principles. It is sufficient to state them, and the practical consequences are forthwith comprehended.

I state a proposition, then, of received and universal truth, when I say that the power of a Republic is in its population; that the basis of population is agriculture; and that the agriculture which combines wealth and population, is that of the freeholder. Quotations in support of a truth so plain would be out of place in the Senate; but there is one which I flatter myself they would be willing to hear, one to which it would listen with pleasure, whether it be for the justness of the sentiments, the simplicity and beauty of the language, or for the eminent authority from which it comes. I speak of General Hamilton's report in favor of manufactures, and in the front of which he places the following just and noble encomium upon the agricultural interest:

*The Quotation.*

“It ought readily to be conceded, that the cultivation of the earth, as the primary and most certain source of national supply—as the immediate and chief source of subsistence to man—as the principal source of those materials which constitute the nutriment of other kinds of labor—as including a state most favorable to the freedom and independence of the human mind—one, perhaps, most conducive to the multiplication of the human species—has, *intrinsically*, a strong claim to *PRE-EMINENCE* over every other kind of industry.”

Tenantry is unfavorable to freedom. It lays the foundation for separate orders in society, annihilates the love of country, and weakens the spirit of independence. The tenant has, in fact, no country, no hearth, no domestic altar, no household god. The freeholder, on the contrary, is the natural supporter of a free Government, and it should be the policy of republics to multiply their freeholders, as it is the policy of monarchies to multiply tenants. We are a republic, and we wish to continue so: then multiply the class of freeholders; pass the public lands cheaply and easily into the hands of the people; sell, for a reasonable price, to those who are able to pay; and give, without price, to those who are not. I say give, without price, to those who are not able to pay; and that which is so given, I consider as sold for the best of prices; for a price above gold and silver; a price which cannot be carried away by delinquent officers, nor lost in failing banks, nor stolen by thieves, nor squandered by an improvident and extravagant administration. It brings a price above rubies—a race of

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virtuous and independent farmers, the true supporters of their country, and the stock from which its best defenders must be drawn.

"What constitutes a State?

Not high rais'd battlements, nor labored mound,  
Thick wall, or moated gate;  
Not cities proud, with spires and turrets crown'd,  
Nor starr'd and spangled courts,  
Where low-born baseness wafts perfume to pride:  
But MEN! high-minded men,  
Who their *duties* know, but know their *rights*,  
And, knowing, *dare* maintain them."

What made *these* States? What *constitutes* their power? What brought *them* to their present height of power and freedom? What made *them*, as they now are, the pride and admiration of the universe, and the sole depository of human liberty? What produced these great results, but the operation of the system, which, with so much more zeal than ability, I now recommend to the Senate? A system of cheap and ready distribution of the soil among the people, by the combined action of sales and donations; sales upon easy terms to those who are able to pay, and gratuitous gifts to those who are not. These Atlantic States were donations from the British crown; and the great proprietors distributed out their possessions with a free and generous hand. A few shillings for a hundred acres, a nominal quit rent, and gifts of a hundred, five hundred, and a thousand acres, to actual settlers: such were the terms on which they dealt out the soil which is now covered by a nation of freemen. Provinces, which now form sovereign States, were sold from hand to hand, for a less sum than the Federal Government now demands for an area of two miles square. I could name instances. I could name the State of Maine; a name, for more reasons than one, familiar and agreeable to Missouri; and which was sold by Sir Ferdinando Gorges to the proprietors of the Massachusetts Bay, for twelve hundred pounds, provincial money. And well it was for Maine that she was so sold; well it was for her that the modern policy of waiting for the rise, and sticking at a *minimum* of \$1 25, was not then in vogue; or else Maine would have been a desert now. Instead of a numerous, intelligent, and virtuous population, we should have had trees and wild beasts. My respectable friend, the Senator from that State, (Gen. CHANDLER,) would not have been here to watch so steadily the interest of the public, and to oppose the bills which I bring in for the relief of the land claimants. And I mention this to have an opportunity to do justice to the integrity of his heart and to the soundness of his understanding—qualities in which he is excelled by no Senator—and to express my belief that we will come together upon the final passage of this bill: for the cardinal points in our policy are the same—economy in the public expenditures, and the prompt extinction of the public debt. I say, well it was for Maine that she was sold for the federal price of four sec-

tions of Alabama pine, Louisiana swamp, or Missouri prairie. Well it was for every State in this Union, that their soil was sold for a song, or given as a gift to whomsoever would take it. Happy for them, and for the liberty of the human race, that the kings of England and the "Lords Proprietors," did not conceive the luminous idea of waiting for the rise, and sticking to a *minimum* of \$1 25 per acre. Happy for Kentucky, Tennessee, and Ohio, that they were settled under *States*, and not under the Federal Government. To this happy exemption they owe their present greatness and prosperity. When they were settled, the State laws prevailed in the acquisition of lands; and donations, pre-emptions, and settlement rights, and sales at two cents the acre, were the order of the day. I include Ohio, and I do it with a knowledge of what I say; for ten millions of her soil, that which now constitutes her chief wealth and strength, were settled upon the liberal principles which I mention. The Federal system only fell upon fifteen millions of her soil; and, of that quantity, the one-half now lies waste and useless, paying no tax to the State, yielding nothing to agriculture, desert spots in the midst of a smiling garden, "waiting for the rise," and exhibiting, in high and bold relief, the miserable folly of prescribing an arbitrary *minimum* upon that article which is the gift of God to man, and which no parental Government has ever attempted to convert into a source of revenue and an article of merchandise.

But it is not to the wealth and population of the States alone, that the fatal effects of this Federal dominion over their soil is extended. It reaches and affects a still higher object—the *sovereign character of the States themselves*. The new States are not equal in sovereignty to the old ones. The points of difference are numerous, striking, and highly material. The old States have a right to make primary disposition of the soil within their limits; the new ones have not. The old States have the right of taxation; the new ones have not. The old States possess the right of eminent domain; the new ones have it not. The Federal Government has no jurisdiction over the soil, timber, grass, and water, of the old States; they assert and exercise jurisdiction over all those in the new States; denouncing penalties of fine and imprisonment against the citizens of the new States who may cut a stick, dig a hole, tread down grass upon the public land, or boil the salt water of the great Federal landlord; and her Federal courts are authorized to punish these offences, and her military force is armed with power to expel with the bayonet, whomsoever her agents may choose to consider as intruders upon any ground that they may please to suppose belongs to the great power before which all must bend. This condition of inequality I hold to be inconsistent with the terms and spirit of the constitution; inconsistent with the terms and spirit of the cession acts, by which



the North-western and South-western Territories were ceded to the Federal Government; inconsistent with the terms and spirit of the treaties by which Louisiana and Florida were ceded to the United States; and wholly incompatible with the independence of the States themselves. To remove this inequality, and all its consequent evil; to avoid, especially, the conflict of laws, of jurisdiction, and, perhaps, of arms, to which it is to give rise—immediate steps should be taken to surrender the public lands to the States within which they lie. The bill before you does not contemplate this measure; but the consideration of this bill has turned the minds of eminent statesmen in that direction, and I shall expect to see the proposition distinctly brought before the Senate from a quarter as distinguished for political wisdom, as for the disinterestedness of its action.\* It will not do, Mr. President, for gentlemen who come from the great cities, to estimate the wild lands of the West, according to the standard of their own fields and gardens. They must listen to those who come from the West, and have a personal knowledge of what they say. If they do not, they will make this Union a curse to those whose interests are legislated upon by members of Congress from far distant States, ignorant of facts themselves, on account of that distance, and deaf to the voice of those who can state the truth. They must listen to those who speak the *general voice of the West*, backed, as I am, by memorials from four States, and supported by numerous Senators and Representatives. I speak the voice of seven States and three Territories, Mr. President, when I denounce this doctrine of waiting for the rise, as a policy false in itself—fraught with injustice to these States—involving a breach of the cession acts; a breach of the compact between the Federal Government and the new States; a breach of the constitution; a policy injurious to the public revenue; injurious to the public property in the new States; injurious to the old States, and destructive of the sovereignty and independence of the new ones. These, sir, are not a string of phrases, repeated without consideration, but each a text, upon which a commentary of facts, reasons, and consequences, might be delivered, each as long as the speech which I am now addressing to you. But I will not attempt this commentary. Time forbids it. I will merely indicate the facts which sustain my positions.

I say, then, that the policy of holding up the lands at an arbitrary *minimum*, and waiting for a rise in the price, is a policy intrinsically false; and I prove it by a reference to the elementary principles of political economy; those principles which forbid a Government to make merchandise of its soil; which forbid it to turn landlord; hold tenants; reserve large tracts of ground in the wilderness state; enact a code of

forest law, and maintain a body of officers in pay and authority, to protect its timber, grass, and soil.

I say it is a policy fraught with injustice to the new States; and I prove it by referring to the table of unsold land in the States of Ohio, Indiana, Illinois, Missouri, Louisiana, Alabama, and Mississippi; covering from one-third to nineteen-twentieths of their soil, paying no tax, helping to open no roads, build no bridges, dig no canals, support no schools, locked up from agriculture, and as useless to the people as so many royal parks in the kingdoms of Europe.

I say it is a policy involving a breach of the cession acts, and I prove it by referring to the terms of these cessions. Here they are:

*The cession act of Virginia.*

"Be it enacted by the General Assembly, That it shall and may be lawful for the Delegates of this State, to the Congress of the United States, and they are hereby authorized and empowered, to convey, transfer, &c., to the United States, in Congress assembled, for the benefit of said States, all the right, title, claim, &c., which this State has, as well to the jurisdiction, as soil, to the Territory situate northwest of the Ohio River, and within the chartered limits of Virginia, upon condition, &c., that the Territory, so ceded, shall be formed into Republican States, not less than three, nor more than five in number, with the same rights of sovereignty, freedom, and independence, as the other States: and that all the land within the Territory, so ceded, and not disposed of in bounties, &c., shall be considered as a common fund, for the use and benefit of such of the United States as have become, or shall become members of the Confederation, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatsoever."

*[The cession act of Georgia, ceding the South-western Territory, being in the same words.]*

Such are the terms of the cessions. The lands "*to be disposed of*," and not to be held up indefinitely; to be disposed of for the "*common benefit*" of all the States, and not reserved for the use of the Federal Government. Yet they have already been held up fifty years; and, under the present mode of selling, must be held up for centuries to come.

I say that this policy involves a breach of the articles of compact between the new States and the Federal Government; and I prove it by referring to the article by which those States agree not to exercise the right of taxation over the public lands until they are sold; which clearly implies that they are to be sold, and absolves the States from the observance of the article, if its terms or spirit is not complied with.

I say that this policy involves a breach of the constitution; and prove it by referring to that equality of sovereign rights which the constitution guarantees among all the States, and which is not enjoyed in the new States, on account of the Federal dominion over their

\* *Virginia.* Mr. Randolph and Mr. Tazewell had each informed me that they would bring forward this proposition. The former being absent, the latter did it.

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soil, and which the continuance of this policy will increase and protract.

I say it is a policy injurious to the public revenue; and prove it by referring to 186,000,000 of dollars paid in interest upon the public debt, while waiting for that rise in the price of land which this policy anticipates, and which has not yet begun. Once in every 16 years the principal of the public debt is sunk in interest: it stands to reason, then, that the land will go just as far in the payment of that debt if sold for twenty-five cents now, as it will do if sold for fifty cents at the end of sixteen years; or at one dollar in thirty-two years; or two dollars in sixty-four years; or four dollars in one hundred and twenty-eight years; and so on, as far as the calculation may be carried.

I say it is injurious to the public property in the new States; and prove it by pointing to the continued destruction of the public timber, and which all the penal laws, and troops of the Federal Government, and all its tribe of forest officers, are unable to prevent.

I say it is a policy injurious to the old States; and prove it by pointing to the enormous taxes which they are now paying, through the custom-houses, to raise money to meet the interest and a fraction of the principal of the public debt, after having given land enough for that object to pay the debt, if faithfully and judiciously applied to that purpose.

I say it is a policy destructive to the sovereignty and independence of the new States; and prove it by recurring to the fact that they are not "*equal*" to the old States; that they have not the attributes of sovereignty, the right of taxation, of eminent domain, and of primary disposition of the soil; that the Federal Government exercises jurisdiction over the soil and persons of their citizens; denouncing fine, imprisonment, and military chastisement, against those who may cut a stick, or dig a hole, or lift a stone, from Federal ground; and, to sum all up in one degrading word, by showing that the new States are the *tenants* of the Federal Government.

Connected with this policy of holding up the lands for the rise, is the system of reserving from sale the land that is supposed to contain lead ore, salt water, and iron ore. These the Federal Government has reserved to itself, and has proposed to derive a great revenue from the rents! Officers are actually engaged in this business of renting and leasing, and, according to reports, have organized a body of about two thousand tenants in the State of Missouri! Mr. President, I must be permitted to borrow the language of *Edmund Burke*, to do justice to the folly of such a system. It was the fate of Burke to attack, and to explode, that system in England; and I trust that his sound political wisdom will not be less availing in the American Senate, than it was in the British House of Commons. He brought in a bill to alienate the crown lands, and sup-

ported it in a speech replete with patriotism, and wise maxims of political economy. Listen to what he says:

"A landed estate is certainly the very worst which the Crown can possess. \* \* \* All minute and dispersed possessions—possessions that are often of indeterminate value, and which require a continued personal attendance—are of a nature more proper for private management than for public administration. They are fitter for the care of a frugal land steward, than of an office in the State. \* \* \* If it be objected that these lands, at present, will sell at a low market; this is answered, by showing that money is at a high price. The one balances the other. Lands sell at the current rate, and nothing can sell for more. But be the price what it may, a great object is always answered, whenever any property is transferred from lands which are not fit for that property, to those that are. The buyer and the seller must mutually profit by such a bargain; and, what rarely happens in matters of revenue, the relief of the subject will go hand in hand with the profit of the exchequer. \* \* The revenue to be derived from the sale of the forest lands will not be so considerable as many have imagined; and I conceive it would be unwise to screw it up to the utmost, or even to suffer bidders to enhance, according to their eagerness, the purchase of objects, wherein the expense of that purchase may weaken the capital to be employed in their cultivation. \* \* \* The principal revenue which I propose to draw from these uncultivated wastes, is to spring from the improvement and population of the kingdom; events infinitely more advantageous to the revenues of the crown than the rents of the best landed estate which it can hold. \* \* \* It is thus I would dispose of the unprofitable landed estates of the crown: *throw them into the mass of private property*: by which they will come, through the course of circulation, and through the political secretions of the State, into well-regulated revenue. \* \* \* Thus would fall an expensive agency, with all the influence which attends it."

Such were the sentiments of Mr. Burke, and they produced their effect. The King himself, at the ensuing session, recommended the alienation of the crown lands; and the Parliament acted in conformity to his message. The forests and mines, which had been nothing but a source of patronage to the King, and of vexation to the people, were thrown into the mass of private property; an expensive agency and many oppressive laws were got rid of; the lands and mines became infinitely more productive; and, by increasing the wealth and population of the country, increased, at the same time, the annual receipts into the public Treasury. So far from fixing an arbitrary *minimum*, and holding up for the rise; so far from screwing up purchases to the highest bid; Mr. Burke, the King, and the British Parliament, thought it wise to prevent them from bidding eagerly against one another, and that it was better for the buyers and the kingdom that their money should be reserved for the improvement and cultivation of the land which they might purchase.

The pledge was not made by the donors

of the land. It was *intended* by them that the ceded lands should be applied to the payment of the public debt; but they made no other stipulation with Congress in reference to their use, but that they "should be disposed of for the common benefit." The pledge in question was made long after the cession, and made by the influence of the same interest in Congress which funded the public debt, doubled the price of land, and established the system of paying annual interest until the land should rise to four and eight dollars per acre. Still it was not a pledge of the *lands*, but only of the *net proceeds of the sales*; and, each succeeding Congress has felt itself at liberty to make gratuitous donations of the land to any extent that it pleased. Look to the statute book; its pages are filled with these donations, from the year 1785 down to the present session.

[Mr. B. here enumerated many of these donations. The bounty lands to the officers and soldiers of the Revolution; 100,000 acres in the year '87, to actual settlers in Ohio; 24,000 acres to the French of Gallipolis; donations to the Nova Scotia and Canada refugees; 6,000,000 of acres to the soldiers of the late war; 90,000 to French settlers in Alabama; donations to States for seats of Government; to counties for county court-houses; to States for schools and colleges; 24,000 acres to General Lafayette; 24,000 to the Asylum of the Deaf and Dumb in Connecticut; 24,000, at the present session, to the like Asylum in Kentucky.]

Mr. B. continued: These, Mr. President, are only a few instances, by way of example. I think it probable that an accurate examination would show that the United States have given away nearly as much as they have sold; and we all know that we are running down the road of donations at present, with a rapidity which threatens to arrive at the end of the land, by a shorter process than the present system of selling would indicate. This is proof enough of the fallacy of the objection; a fallacious objection, indeed, which would permit the Government to make princely donations to foreigners and refugees, and deny it the capacity of making small donations to its own citizens!

The principle, then, of donations which the bill contains, is entirely free from legal objection, and resolves itself into a question of mere expediency. Is it, then, expedient that Congress should make the donations which the bill contemplates? And, first, what is the amount and value of these proposed gifts? Eighty acres of refuse land, Mr. President, land which remains unsold after the district has been five times picked over, and reduced to the price of twenty-five cents per acre, and which price nobody will give! Far from considering such donations as too great for this Government to make, I feel ashamed of their smallness and insignificance. If I could have followed the sug-

gestions of my own judgment, I should have indicated double the quantity, one hundred and sixty acres, to be taken immediately after the public sales; and I trust that an amendment to that effect will yet succeed. But even the donations contemplated by the bill, as it now stands, would be the means of saving many families from want and vice, and converting many idle citizens into useful members of society. Eighty acres, even of indifferent land, would furnish a home to many that are houseless. If some ten, twenty, or thirty acres, could be found upon it, fit for cultivation, it would make a little farm, on which a small family, a widow with her orphan children, or a young man just married, could subsist in comfort and independence.

[Mr. B. here gave an example of what might be accomplished by industry and economy, and a little home to live at. It was the case of "*Granny White*." At the age of sixty, she had been left a widow in one of the counties in the tide-water region of North Carolina. Her poverty was so extreme, that when she went to the County Court to get a couple of little orphan grandchildren bound to her, the justices refused to let her have them, because she could not give security to keep them off the parish. This compelled her to remove; and she set off with the two little boys, upon a journey of eight or nine hundred miles, to what was then called "*the Cumberland Settlement*." Arrived in the neighborhood of Nashville, a generous-hearted Irishman let her have a corner of his land on her own terms, a nominal price and indefinite credit. It was fifty acres in extent, and comprised the two faces of a pair of confronting hills, whose precipitous declivities lacked a few degrees, and but a few, of mathematical perpendicularity. Mr. B. said he knew it well, for he had seen the old lady's pumpkins propped and supported with stakes, to prevent their ponderous weight from tearing up the vine, and rolling to the bottom of the hills. There was just room at their base for a road to run between, and not room for a house, to get a level place for which, a part of the hill had to be dug away. Yet, from this hopeless beginning, with the advantage of a little piece of ground that was her own, this aged widow, and two little grandchildren, of eight or nine years old, advanced herself to comparative wealth: money, slaves, horses, cattle, and her fields extended into the valley below, and her orphan grandchildren raised up to honor and independence, were the fruits of economy and industry, and a noble illustration of the advantage of *giving land to the poor*. But the Federal Government would have demanded sixty-two dollars and fifty cents for that land, cash in hand, and old Granny White and her grandchildren might have lived in misery and sunk into vice, before the opponents of this bill would have taken less.]

It is to no purpose, Mr. President, said Mr. B., to tell me that eighty acres of land costs

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but \$100. I answer, that there are innumerable families in this Union who never saw, and never will see the day, when they can pay down that sum. I answer further, that eighty acres of refuse land is not worth \$100. That is the price of a first-rate tract, and a tract that is only one-half, one-third, or one-fourth part fit for cultivation, is only worth the one-half, the one-third, or the one-fourth part of that sum.

It is to the poor alone that these refuse tracts are desirable; a man of property would not waste his time upon them even if he was paid for doing so. Here, then, is the peculiar injustice of fixing a *minimum* price of \$1 25. It operates upon the poor, not upon the rich. It enables the man that has \$100, to get a good quarter section; but the man that has but \$25, cannot buy at all; for he cannot pay the \$100 for a tract which is all good, and the Government will not make an equitable graduation of price, and take \$25 for a tract which is three parts bad, and one part good. It wants a dollar and a quarter all round, which would bring the good land to five dollars per acre. But I discard as contemptible, and unworthy of the Government, the policy of gleaning the public lands all over; gleaning of every kind is forbid, whether it applies to the "*sheaf*," "*the grape*," "*the olive*," or "*the corners of the land*." I repudiate it as a policy abhorred of God and man, condemned by common sense, by patriotism, and by the conduct of all people, in all ages and nations. I contend that the earth is the gift of God to man. *I go for donations; and contend that no country under the sun was ever paid for in gold and silver before it could be settled and cultivated.* Have we not seen these States settled by donations, and sales at nominal prices? Was not Kentucky, Tennessee, and one-third of Ohio, settled in the same way? Were not Upper and Lower Louisiana and the two Floridas settled by gratuitous donations from the kings of Spain—donations which the Federal Government has labored for five and twenty years to appropriate to itself? Are not the lands of Canada given at this moment to any that will come and take them? And was not £80,000 sterling (about \$135,000) appropriated last spring by the British Parliament to defray the expenses of emigrants moving to that province? Look at Texas and Mexico. See land given there in any quantity to any that will come and take it. See our citizens abandoning this land of Liberty, and going there to receive the bounty of a foreign Government, and tell me why it is that those who are afraid of emigration to the West, are not also afraid of emigration to Canada, Texas, and Mexico? In the West Indies, and all over South America, it is the same thing. Here is a decree of the Republic of Colombia, dated June, 1828, for the gratuitous distribution of six millions of acres among emigrants from Europe and America:

*The Decree.*

"The Senate and House of Representatives of the Republic of Colombia, united in Congress, considering—

"1st. That a population, numerous and proportionate to the territory of a State, is the basis of its prosperity and true greatness:

"2d. That the fertility of the soil, the salubrity of the climate, the extensive unappropriated lands, and the free institutions of the Republic, permit and require a numerous emigration of useful and laboring strangers, who, by improving their own fortunes, may augment the revenues of the nation, have decreed:

"That foreigners emigrating to Colombia, shall receive gratuitous donations of land, in parcels of 200 fanegas, (about 400 acres,) to each family.

"That it may be chosen in the maritime, the middle, or the mountainous districts, in the regions favorable to production of sugar, coffee, cocoa, indigo, rice, cotton, wheat, barley, rye, and all the varieties of fruits, both of tropical and high latitudes.

"That five years' cultivation shall entitle a foreigner to naturalization.

"That one million of dollars be appropriated in aid of agriculture, to be distributed, in loans, to industrious farmers."

Such, Mr. President, is the conduct of the free Republics of the South. I say Republics: for it is the same in all of them, and it would be tedious and monotonous to repeat their numerous decrees. In fact, throughout the New World, from Hudson's Bay to Cape Horn, (with the single exception of these United States,) land, the gift of God to man, is also the gift of the Government to its citizens. Nor is this wise policy confined to the New World. It prevails even in Asia; and the present age has seen—we ourselves have seen—published in the capital of the European world, the proclamation of the King of Persia, inviting Christians to go to Persia and receive gifts of land—first-rate, not refuse—with a total exemption from taxes, and the free enjoyment of their religion. Here is the proclamation: listen to it.

*The Proclamation.*

"Mirza Mahomed Saul, Ambassador to England, in the name, and by the authority of Abbys Mirza, King of Persia, offers to those who shall emigrate to Persia, gratuitous grants of land, good for the production of wheat, barley, rice, cotton, and fruits, free from taxes or contributions of any kind, and with the free enjoyment of their religion; THE KING'S OBJECT BEING TO IMPROVE HIS COUNTRY.

"London, July 8th, 1828."

"To improve his country—the King's object being to improve his country!" What a noble object! What a lesson of political wisdom to be read, from the despotic regions of Asia, to the American Senate! And how was land disposed of in that country which had the peculiar care of God? It was given, Mr. President, not sold. "*God gave the earth to the inhabitants thereof*." The promised land was given to the children of Israel, not auctioneered, with a *minimum* of \$1 25 per acre. Land was then

the gift of God to man, and to woman also; for the daughters of *Manasseh* were allowed to inherit, and to share in the bounty of the Giver of all Good.

I have now finished, Mr. President, the view which I proposed to take of the acquisition and administration of the public lands. I have confined myself chiefly to facts, leaving conclusions to the judgment of the Senate. In the rapid view which I have taken of this great subject, it has been clearly shown that the lands were ceded to the Federal Government by a few of the States, for the known and admitted object of paying off the public debt; and that, instead of paying this debt, this great fund has been so mismanaged, that in no one year have the sales yielded one-half, seldom one-fourth, and latterly not one-fifth part of the annual interest of that debt. The fatal policy of waiting for the rise, has cost us more than the lands themselves are worth, or could ever be sold for. It has cost us 186 millions of dollars in interest, leaving the principal of the public debt as large as ever. The public lands have yielded but twenty-six millions of dollars in fifty years, and are now annually yielding less and less. In all probability, it will require a hundred years, under the operation of the present system, to draw twenty-six millions more from them. The expense of administering the system is enormous, amounting fully to thirty-three and a third per centum. With this enormous expense of collection, the most numerous and efficient class of the land officers, the Registers and Receivers, get an inadequate and most insignificant compensation. The document upon our table, shows that the commissions of two-thirds of them for the year 1824, were less than \$200 each; many are shown to be less than \$100, and several which did not amount to \$50. With such compensation the best of officers must quit the service, and let their offices fall into hands less trustworthy. In the meanwhile, the lands are dribbled away upon a thousand objects, foreign to the intention of the States which ceded them. The States are again recurred to to raise money for the same object for which the lands were ceded; and they are heavily taxed through the custom-houses, to raise ten millions per annum, in addition to the current expenses of the Government, to meet the annual interest, and a fraction of the public debt. The knavery and delusion in which the present mode of selling lands had its origin, stands detected and exposed: the necessity of a radical change is demonstrated and admitted. The advantage of returning to the principles of 1790; the advantage of prompt sales at present value; a speedy discharge of the public debt; and the wisdom and justice of passing the lands cheaply and easily into the hands of the people; are measures which can no longer admit of two opinions. Theory and experience combine to demand their fulfilment; and the bill which I have introduced is intended to accomplish

them. I do not say that it presents the best mode of disposing of the public lands; I do not even say that I cannot present a better. But I will say that it contains *all* that I hoped for when it was introduced; and *less* than I hope for now. A great change in the public mind has lately taken place on this subject, and is continuing to take place; and I am of opinion that a plan will be adopted still more consonant to the rights of the new States and to the interest of the public Treasury. The present system is indefensible and insupportable. Its continuance is impossible. The old and the new States will unite to put it down; all the friends to the State rights will unite against it. The new States are tenants to the Federal Government; their citizens subject to be treated as trespassers (within their own counties) by the Federal Government—dragged before a Federal Judiciary, as true to the Federal Government as the needle is to the pole—and punished for cutting a stick. Even military force may be an accompaniment, or substitute, of Federal Judicial process. Then these States are liable to be exhausted by an incessant drain of money, and, in the sufferance of this evil, Kentucky and Tennessee are joined with the rest: for they are to furnish emigrants to the others, and money to pay for the public lands. The Western States now pay a million of dollars per annum to the custom-house at New Orleans; they pay, besides, a heavy proportion of the customs in Philadelphia, New York, Baltimore, and Boston. Then they are subject to the operation of thirty land offices, each a vortex for the absorption of dollars. Will the Congress attempt to continue this system? Is there a Senator present who will say that he will hold up the public lands until they rise to \$1 25 per acre—until 800 millions of dollars are received for the 240 millions of acres which the new States and Territories contain? Sir, reflect upon it! Think of the enormity of the sum, the smallness of the population, their remoteness from commerce, the scarcity of gold and silver among them, and the many restrictions under which they are laid by the policy of this Government. Three hundred millions of dollars! And have you no commiseration for the people on whom you intend to levy it? Have you less feeling for the people of the West, than for the inhabitants of France and of India? I say, France and India, because the public feeling has been put to the test with respect to both. The Allies imposed upon France, in the year 1815, seven hundred and fifty millions of francs, (\$150,000,000,) and the public voice was everywhere raised against the enormity of the imposition. Yet France had a population of thirty millions, was rich in gold and silver, and bloated with the spoil of conquered Europe. The page of history has given immortality to the sufferings of Indostan, ravaged by *Nadir Shah*, about the middle of the last century; yet that remorseless conqueror brought off but eighty millions sterling: a.

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sum, great to be sure, but comparatively light and trifling, to be taken from the wealth and population of the Mogul Empire, to what three hundred millions of dollars would be, taken from the Western States and Territories. Still the French and the Hindoos had another advantage over our brethren of the West. Their sufferings, though violent, were brief and transient. They lasted but for a few years, and for a few campaigns. The invasions to which they were subjected, were tempests which spent their force, subsided, and left the desolated countries to recover in peace. But the meditated levy upon the West is to last for ages and centuries. At the rate of a million a year, it will take three hundred years to complete it; and, during all that time, nine States (for Kentucky and Tennessee are to furnish most of the money); during all that time, nine States and three Territories are to suffer a drain which would exhaust the mines of Mexico and Peru.

Yet it is only a part of the population of these States which is to furnish this great sum—a single class in society are to be called upon for it, and that class the one which contributes most to the support of the Government, receives the fewest favors from it, and handles the least money. I speak, Mr. President, of the agricultural class. What gives this Government two and twenty millions of revenue per annum? Duties on imports. And what brings in imports? Exports. And on what are they founded? On sixty-six millions of dollars worth of cotton, tobacco, flour, rice, beef, pork, and other productions of agriculture. Surely a wise and paternal Government would cherish, not kill, the goose which lays such golden eggs. Surely the maxims of Edmund Burke ought to prevail; instead of screwing up such bountiful furnishers of revenue to the highest possible price for the land which they are going to cultivate, more for the support of Government than themselves; instead of compelling them to expend in the *purchase*, the money which should be devoted to its *improvement*; surely a Republican Government, with hundreds of millions of acres, which it can neither sell nor use, would gratuitously bestow upon every citizen that would work it, as much land as he would take. But such are not the intentions of the opponents of this bill. True to the maxim of "*penny wise and pound foolish*," they adhere to the project of making revenue out of land. They stick to the *minimum* of \$1 25, and look to the farmers and planters to pay it. I say to the farmers and planters: for merchants and tradesmen do not deal in land. It is the farmers of the West who are looked to for these three hundred millions of dollars, and are required to pay it down in advance. No credit for them. Credit is reserved for the importing merchants. Farmers cannot be trusted, although the Government retains the land for security until the last dollar is paid, with a clause of forfeiture, both of land and money, for non-payment, even in

the last instalment; and has, at this moment, many such forfeits in land, which, with the blessing of God, I will endeavor to make it disgorge at the next session. No, sir, farmers cannot be trusted, like importing merchants; although one of these merchants, a great importer at Philadelphia, has defrauded the Treasury of eight hundred thousand dollars since the day that I laid this bill upon your table. But it is not enough that farmers must produce the exports which bring in the imports which furnish the Government with revenue, and that these exports must be raised from the ground which is paid for in advance; even this ground is not to be sold for its fair price—is *not to be sold for a price adapted to its quality*—but is to be subjected to an odious and arbitrary *minimum*, which puts all qualities, good and bad, at one uniform rate. If a farmer wants a quarter section, adjoining his farm, either for the sake of the timber it bears, or for a stone quarry upon it, or for a spring of good water, which is running away, or for some ten, twenty, or fifty acres of good land which it contains, and is ready to pay down the actual value of this quarter section, it is in vain that he offers the money, and applies to the Federal Government, for it. The Government has but one price, and is in no necessity to sell. It pays no taxes, and levies as much money as it pleases upon the labor of the farmers, and upon the tools they work with, through the tariff of duties in the custom-house. This frightful picture, Mr. President, seems to be incapable of aggravation. Imagination, indeed, could add nothing to it. Fancy could color it no higher. But look to the reality, and the climax continues to rise. Iron is an article of indispensable necessity to the farmer; he cannot work the ground without it. Well, there is iron ore in the Western country—in Missouri, especially, upon the Federal lands—and surely the Federal Government, which exacts so much of farmers, will place this indispensable article in their hands upon the easiest terms. Not so the fact. The learned eye of this Administration has made discovery of these "*ferruginous appearances*," and, straightway, the iron ore is locked up from the people's use. The President's proclamation for the reservation of iron ore "*is broad upon the face*" of the West, and I will undertake to say, that it is the first instance in the history of the human race, in which the people of a country have been interdicted by their own Government from the use of the iron which God had placed among them.

But surely these follies and impositions must have an end. Iron, lead, and salt, must cease to be objects of Governmental monopoly. Land must cease to be treated as an object of revenue. What is sold, must be sold quickly, and at prices adapted to its quality. The refuse should be given to the poor. Gleaning is abhorred of God and man. The Holy Scriptures abound with injunctions against it. We are forbid, "*to reap the field twice over*"—"to beat

*the boughs of the olive a second time*"—"to pick the vines again"—or, "to make clean riddance throughout the corners of the land." These are commandments of Divine origin, eternal in duration, and universal in their application. They apply to Governments, as well as to individuals; to *land*, as well as to the *fruits* of the land. And shall this Government be exempt from their operation? Shall it have no eyes to see, no ears to hear, no heart to feel, no bowels of compassion to yearn over the misfortunes of the naked and houseless? Shall it continue to sell to the last acre? Shall it go on to make "clean riddance" through all the corners of the land? Shall it leave not one "*sheaf*" in the field, not one "*grape*" on the vine, not one "*olive*" on the bough? Shall it stand a solitary exception in the annals of the world? Shall it, alone, be the *seller* of what every other nation *gives*? Throughout the globe, in all ages, and among all nations, *land*, the gift of God to man, has been the subject of gratuitous donation. We may open the page of ancient or of modern history—we may look to the examples of Kingdoms or of Republics—we may go to Christians, Jews, or Mahometans—we may take in the extremes of time, and embrace the entire circumference of the globe—we may traverse this continent, from Hudson's Bay to Tierra del Fuego—we may descend to the antipodes, to the Persians, whose feet stand opposed to our own—we may go to the thrones of Darius and Artaxerxes, to the successors of Tamas Kouli Khan—and everywhere (save in these United States) we shall find *LAND*, the gift of God to man, bestowed by the Governors of the earth, according to his bountiful intentions, upon those who will work it. But I owe it to my country to vindicate its reputation from the odium of this solitary exception. I owe it to the present generation to tell, that the present land system grew up in unhappy times—times when the funding-system-men were lords of the ascendant—when two and six-pence, by a vote of Congress, was changed into twenty shillings—when three millions of actual debt was converted into five and twenty millions! But the time has gone by for these things to be done, or endured. The day has passed by when speculators in soldiers' certificates are to be the masters of legislation. Selfish calculations can no longer intrude into this Chamber. I address myself to Senators who look to the interests of the States from which they come, and to the welfare of the Confederation, of which they are the Council, I address myself to men who have heads to think, hearts to feel, minds to will, and constitutional power to act. From such I will not despair of success; for I know the minds of many. I know that the principles of this bill, under some modification, will soon prevail; that the public lands will soon either be transferred, upon equitable terms, to the States in which they lie, or divided into classes; the first to be sold out for the payment of the public debt; the second to be given to the

States for the promotion of education, the construction of roads and canals, and for gratuitous distribution among the poor. I address myself to Senators who I know to be intent on great objects—upon the release of the new States from their condition of tenants to the Federal Government—on the payment of the public debt—and on the revision of the tariff: a revision to be made, not for the purpose of addition, but of reduction; for the reduction of one-half—the reduction of the ten millions now absorbed in the sinking fund: a revision which will give to the Legislator the grateful task of lifting the duties from necessities, and leaving them upon luxuries, and upon articles which conflict with the pursuits of our own industry.

Mr. BARTON rose, and said: In this remnant of an afternoon, at this protracted period of the session, with such a mass of business, in which so many citizens are interested, still to be acted upon, I will not enter into the discussion of the bill before the Senate, especially as it is the avowed intention of my colleague, and of the Senators, not to act upon this bill at the present session of Congress. But, said Mr. B., it is my intention to make a brief reply to that part of my colleague's speech that does not relate to any business before the Senate, to which he has indulged in such extraordinary and unnecessary denunciations of the Administrations of the General Government, both past and present, especially to that part of the speech respecting the reservations of Salines and Lead Mines, by the Government of the United States, and to the administration of the laws in relation to them, by the Executive branch of this Government.

True, these subjects are not before the Senate at present; but the speech having been originally prepared to cover this ground, has been accordingly delivered. I should have deemed it more fair, however, if the speech, confessedly prepared after the study of many months, and evidently the product of much labor, had been ushered upon us at an earlier period, and not held back until the hurried scene of a closing session of Congress, as if by design to prevent reply, and then sent forth among the people, with certain long reports never called up for consideration, unanswered.

The Committee on Public Lands agreed to report the bill to authorize the sale of the reserved Salt Springs of the United States in Missouri, to be passed, if the Senate should think proper, deeming it wholly unnecessary to continue the laws reserving them from sale as other lands.

After all the declamations which the Senate has just heard about the mysterious virtues, and the indispensable necessity of salt to man, and about the heartless tyranny of making such reservations by the United States, the fact is that the United States in their compact with Missouri, have granted twelve of the best Salt Springs in the State, to be selected by herself; and the remaining ones are not worth being

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distinguished from the mass of the public lands.

The want of salt can never be felt, in Missouri, on account of the monopoly of Government; but may be rendered as plenty and cheap as the wood in our forests or the grass in our prairies, whenever the people of that country shall find an inducement to manufacture that article.

The country abounds in salt waters, (some of them, my colleague has told you, large enough to turn mills,) and Heaven has given us much better security for the article than the bill upon this subject can do.

With regard to the other bill, not before the Senate, which forms a part of the subject of the speech to authorize the sale of the United States reserved lead mines, the committee entertained a different opinion of the propriety of throwing them into market at the present time, with the present information of their situation and probable value, possessed by the people of the United States, their common owners, and instructed me to move the indefinite postponement of that bill, when it should be taken up for consideration. I concurred with the committee in that opinion. What is the situation of the people of the new Western States? Are they prepared to enter the market to purchase the lead mines of Missouri? Every man knows that those people are immersed in debt, contracted in the purchase, and the over-purchase of the public lands.

From the year 1820 to the present session, applications have been made by them for relief from those embarrassments. That relief has been granted by that Government which we have just heard denounced for its grinding, heartless tyranny, with a lenity and kindness more characteristic of an indulgent parent than of an unfeeling tyrant. Are those people, to whom we have extended relief and remission at this very session, now prepared to compete with the money-holders and speculators, in the purchase of the lead mines? The inevitable consequence of such a competition must be that the mines would be monopolized by a few companies of moneyed speculators, while the body of the country are borne down by the debts contracted for the lands they live on—debts enhanced upon them by the former cupidity of those same moneyed speculators. Were the interests of Missouri alone to be considered, it is surely not the time to urge upon the United States the sale of the lead mines.

But we have a higher duty to perform, and a larger object to consider, than the supposed local advantage of the few people of the United States, who now inhabit Missouri.

Those mines are the common property of all these United States; all are equally interested in them, and equally entitled to full and fair information of their situation, value, and whatever else may conduce to a fair and equal disposition of them. They were purchased with the money of all; and the small number of the common owners who have since migrated to

the Mississippi are not alone to be consulted; and, if they were, the inevitable consequence of bringing the mines into market, at present, would be to throw them into the hands of a few United States officers, and other money-holders—especially holders of public money—to the exclusion of the great body of the people of that country. It will be time enough to sell our lead mines hereafter.

These reservations, however, have been made, by my colleague, the subject of the most unqualified denunciation of the Federal Government of the United States, and the pretext for a most disengenuous attempt to disaffect the people of Missouri towards the Executive administration of that Government, both past and present.

I declare, it is my solemn conviction, sir, that whatever of excitement exists in Missouri, or among the people of the West, either upon the subject of our public land system, or of the reservations of our lines and salines, did not originate there among the people themselves, but originated here where most other popular excitements in the United States are got up of late years, in these halls, when they are degraded into, what we have heard so much of at this session, a mere "electioneering stump," from which to harangue, and mislead the public mind, to promote the views of the declaimer.

I too, Mr. President, deprecate the idea of the United States ultimately holding and leasing out, to a band of tenantry, the great mineral district in Missouri.

That is neither their interest nor their intention. I too believe it is as unwise in a Republic as in a Monarchy, for the Government to engage in those schemes of money-making, which should be left to individual enterprise.

The proposition to sell those mines was heretofore before the Senate, and they thought then, as the committee think now, that a more general circulation of information respecting these mining districts should first be had; otherwise, instead of inviting population, industry, and capital, to the country, the mines would fall into the hands of a comparative few, who would be unable to work them to the advantage of the public; and they would lie almost as unknown and unproductive as they were under the Provincial Government of Spain.

At a former session, I submitted a proposition to inquire into the expediency of selling the lead mines; but it was evident that the Senate thought more general information respecting them an indispensable pre-requisite to any legislation upon the subject, and I submitted to that known opinion.

Within a few years past, the two last Administrations have turned their attention to the subject, and much information has been obtained. We have already a valuable report from the agent employed by the United States, in the mineral districts of Illinois and Missouri; and, I presume, the information contained in that report, has been duly circulated by the members



of Congress among their constituents. More will be obtained and circulated. And I venture to predict that, by the time the people of the new Western States shall have disembarassed themselves, and prepared to enter the market, the United States will have obtained such information as to enable them to dispose of their lead mines with equal justice to all concerned.

But the State of Missouri has been depicted by my colleague as groaning under a kind of military despotism, because the two last Administrations have employed a scientific gentleman who happens to be an officer in our little army, and served the country through the last war, to explore those mining districts, and give to our citizens incipient leases, subject to ratification by the President of the United States!

This is pronounced an unconstitutional usurpation of power in violation of the rights and sovereignty of the State. Now, the whole matter is simply this: By an act of Congress, of the year 1807, the President is authorized to lease lead mines. That law received a practical construction soon after its adoption, and has been carried into execution, occasionally, by every Administration since that time. No man can suppose that the Chief Magistrate of our country is bound, under that law, to go in person, to Illinois and Missouri—explore the public mineral lands, make contracts with the miners for working them, and execute the necessary writings for those purposes. An agency of some kind must be employed between the resident and the lessees. Under a former Administration, the Recorder of Land Titles, at St. Louis, was so employed.

Such having been the known construction and practice, and years having elapsed without any alteration, amendment, or repeal of the law, the late President Monroe, or the proper Department under him, deemed it a duty to put that law into execution, upon application for such leases, and, accordingly, employed the present agent in that service.

The present Executive has had no other agency in the leasing of the public lead mines, than to continue a system which he found in operation when he came into office.

Although I do not expect much pecuniary advantage to the United States from these leases, yet I do anticipate much advantage from the information to be obtained by the agent. It will give satisfaction to the other States upon the subject of the mines, and it is manifest that they deem that an indispensable pre-requisite to a final disposition of them.

The reservations of salines and lead mines having been made by law, I cannot comprehend how that should be a cause of censure of the Executive officers of our Government. If the law be wrong, repeal it, and not denounce the department bound to observe, and execute it so long as it shall remain in force. If the law be doubtful or defective, explain, or amend it, and not attempt to rouse the feelings of the

West against our Government, no matter who may compose the Executive Department for the time being.

So long as the act of 1807, with the practical construction of it by the General Government, shall remain, so long will each successive Administration feel bound to grant leases to any qualified citizen who may apply, whatever may be thought of the wisdom of the law.

The most singular and far-sought topic of denunciation of the present Administration, which my colleague has discovered, is the late proclamation of the President, for the sale of lands, in June next, at Jackson, in the Cape Girardeau District, in Missouri, which my colleague has read to the Senate.

That is a district abounding in iron ore of the best quality. There is a chain of little mountains, perhaps a hundred feet above the surrounding country, running between the waters of St. Francois and those of the Merrimac River, full of this ore. One section of these mountains, popularly denominated "The Iron Mountain," is almost a solid mass of ore, yielding about seventy-five per cent. of iron. There is iron enough in that district to pave it, if men and capital were there to manufacture the ore. The President has thought proper not to place all this district in the market at the same time; but in the exercise of the discretion given him by law, has reserved from immediate sale a number of alternate sections; and this is denounced as a usurpation of power—a reservation without law!

I do not stand here, Mr. President, to defend the Administration, nor do I believe it stands in any need of being propped up. I do not know who has the honor of being the author of the proclamation in question, whether the President, the Secretary of the Treasury, or the Commissioner of the General Land Office, but I will not pay so poor a compliment to the common sense and common candor of the people of Missouri, as to suppose that they can either misunderstand or disapprove of so judicious an exercise of the discretion given by our laws to our Executive, with regard to the *time when* any particular portion of the public lands, authorized to be sold, shall be exposed to sale. The exercise of this legal discretion has been represented on this floor as a new class of reservations, as absolute as those made by our laws, effected by the usurpation of power.

I possess, sir, no information, from either of the officers mentioned, of the reason for this manner of selling the lands to which the proclamation applies; but it is the manifest interest of Missouri, and right of the other States owning this common property, that an opportunity should be given to their citizens who will hereafter migrate to that country, to become proprietors of that valuable ore, and manufacture. Let a portion of it become private property now, and its value be developed to the Union, and let them have a portion of it within their reach, when they shall be tempted to migrate;

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and not put in the power of a few capitalists at once to select and monopolize the most valuable beds of ore, and the timber, coal, and water power necessary to its manufacture.

This course, I believe, sir, to be the combined interest of all; and this, I think it reasonable to presume, was one of the motives of the Executive in this exercise of a discretion which we have thought proper to vest in him by law.

My colleague has made the extraordinary declarations to this Senate that the miseries of the West were owing to the mal-administration of the Government of the Union—that the Western Banks were broken down by the partiality and favor of our General Government towards the Banks in the Atlantic States; and in the extravagance of his criminations he has compared the operation of the Federal Administration upon the West to the operation of a steam engine crushing the human body, and still moving on, insensible of the misery it inflicts on the victims and regardless of the agony of his “wife, children, and friends.” Such, sir, are not the feelings of the West. That portion of the Union has certainly felt the common pressures of the times; but the General Government has gone far to alleviate their sufferings, has almost forgiven their debts, and generously saved them from their own extravagance and folly. The West certainly has felt the privation of a new country; but they are substantially rich, procuring all the necessities of life with much less labor than their brethren of the Atlantic States do.

I will speak for the people of Missouri. They are not disaffected towards the Government of the Union; and no one acquainted with my colleague will suppose I mean *him*, when I say, if we had among us a man endowed by nature with all the great qualities necessary to constitute a successful *TRAMP*—even he could not disaffect the population of Missouri towards the Government of the United States.

In conclusion, Mr. President, I will observe that hereafter, should a suitable opportunity be presented, I will attempt to show that this bill “to graduate the price of public lands,” or, in other words, to destroy, by indirect means, the sound and salutary land system of the United States, under which such States as Ohio have sprung into existence within our own recollection, with scarcely a dispute about any man’s title to his home, is a compound of electioneering and speculation. At this late hour of the day and of the session, with such a mass of bills before the Senate, upon which the right of so many depend, I will not follow the example set me by inflicting upon this honorable body a studied, popularity-hunting, Senate-distressing harangue.

On motion of Mr. BARTON, the bill was then laid on the table.

WEDNESDAY, May 17.

*Penitentiary for the District.*

The Senate then took up the bill “to provide for erecting a Penitentiary in the District of Columbia, and for other purposes.”

Considerable debate ensued on this bill, which was supported by Messrs. EATON, CHAMBERS, ROWAN, and WOODBURY, and opposed by Messrs. RANDOLPH, HOLMES, CHANDLER, HAYNE, and MACON.

Mr. RANDOLPH moved to lay the bill on the table; which was decided in the negative—ayes 10, noes 18.

Mr. CHANDLER then moved to strike out all that part which has reference to a Penitentiary. The motion did not prevail.

The question was then taken on ordering the bill to a third reading, and was decided, in the affirmative, by yeas and nays, as follows:

YEAS.—Messrs. Barton, Boulogny, Chambers, Chase, Dickerson, Eaton, Edwards, Findlay, Harrison, Hendricks, Johnston of Louisiana, Kane, Lloyd, Marks, Noble, Pickens, Rowan, Ruggles, Sanford, Smith, White, Woodbury—22.

NAYS.—Messrs. Benton, Branch, Chandler, Harper, Hayne, Holmes, Macon, Randolph, Robbins, Tazewell, Williams—11.

THURSDAY, May 18.

*Public Lands.*

Mr. JOHNSTON, of Louisiana, submitted the following resolution:

*Resolved*, That the Secretary of the Treasury be directed to lay before this House, at the next session, a statement of the quantity of public land, in the State of Louisiana, and the State of Mississippi, distinguished into first, second, and third rate qualities, accompanied by a general estimate of the proportion of pine hills, swamp, prairie, and other lands fit for the cultivation of sugar and cotton; with such plans and topographical and descriptive remarks as he may deem proper to a full explanation of the subject.

Some information being asked for, as to the object of this resolution, and as to the expense and difficulty of obtaining the information required—

Mr. JOHNSTON said, his object in offering the resolution, was, to obtain information relative to the quality of the public lands in Louisiana, in order to be able to exhibit at the next session, a correct view of the interest which the Government had in the soil of that State. It would appear satisfactorily to Congress, that nine-tenths of the land might be surrendered at once to the local Government without any sacrifice; nay, that it would be wise to do so. The other tenth being adapted to cultivation of sugar and cotton, might be surveyed and sold at once upon such terms as Congress might devise, if they should determine not to cede them to the State. This resolution connected itself with the bill introduced by the gentleman from Missouri, (Mr. BENTON,) relative to graduating the price of the public lands. That bill would in

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all probability lead to some decisive course on the part of the Government as regarded the public lands. Various views were entertained on this subject, and different plans had been proposed. Some had proposed that they should be given to the States; others, that the price at which they were held should be changed; and others again, that they should be graduated, and that the price should be diminished, after they had been exposed to public sale. Hitherto, Mr. J. said, they had been unable to obtain from the General Government, after the most persevering efforts, any decision on the large claims to land in Louisiana. They had been unable to obtain a survey of the public lands; they were unable, consequently, to bring them to market, or to hasten the settlement of the country, which, Mr. J. said, remained as it did 20 years ago, with the exception of the natural increase of its population. His object was to connect this resolution with the before-mentioned bill. There would be also, he understood, a proposition submitted, to ascertain whether Congress were disposed to surrender the lands to the States or not. Mr. J. said it was important for him, as the Representative of that State, to be able to lay an exact view of the subject before Congress to direct their legislation.

An idea was prevalent that Louisiana contained much valuable land; hence arose the difficulty of procuring a decision on the claims which were set up to portions of them, and hence also arose the difficulty in bringing them to market. The interest of the Government in these lands, Mr. J. said, was very inconsiderable, and he should be able to show by the report, that the whole of the cultivable lands in that region (perhaps including Florida) would not be much more than sufficient to defray the expenses which the Government incurred in the present system of surveying and selling the lands. When, therefore, the information which he had called for, should be obtained, the Government would see the value of these lands, and would be able to decide upon the utility of holding them any longer, or whether it would not be better to surrender them at once. There were many political reasons why this Government should not hold any rights of property or jurisdiction over the soil; but, Mr. J. said, this Government was at too great a distance from the country governed, to govern it wisely or efficiently, either for the interest of this Government, or of that country.

There would be no difficulty at all in making the report; the country divides itself into four parts—the pine district, the *low lands*, the *prairie*, and cultivable land. They lie in three great districts, and it would almost be possible to ascertain them on the map; but there were surveyors on the spot, who were acquainted with all the localities, and who could make a good report on the subject. It was very important to have this report. Mr. J. hoped, therefore, the resolution would be concurred in.

Mr. KING objected to the resolution on the ground of the impossibility of effecting the object embraced by it. The Secretary of the Treasury had no possible means of obtaining the information called for. It would cost twenty thousand dollars to employ individuals to examine the country, and make such a report as was required by the resolution; and, even if it could be obtained, it was a question whether any good would be derived from it. It would have no effect on the bill to graduate the price of public lands. Mr. K. said he was not willing, therefore, to embarrass the Department, and to incur an expense in endeavoring to effect an object, which, if it were successful, could not be of any use. Mr. K. expressed his opinion that it would be more advantageous if the public lands were vested in the several States. It would be more beneficial to the country generally. The expenses of surveying, and other expenses, swallowed up the proceeds of the lands, while the States were drained of the little money they had. He was sufficiently acquainted with the nature of the public lands in the Southern States, to come to the conclusion that it was impracticable to get any correct information on the subject embraced by the resolution without very great expense.

Mr. VAN BUREN said, if the resolution contemplated a survey only, it might be a question whether the object would be worth it; but there was no objection to it—as it could be done without expense. The information called for by that resolution might be of essential advantage. The subject of the public lands was becoming daily more and more interesting, and would occupy much time in legislation. It extended the patronage of the Government over these States to a great extent; it subjected the States in which those lands were situated, to an unwise and unprofitable dependence on the Federal Government. Mr. V. B. said he should vote for every call on that subject, to enable them at some future day to act understandingly on it. No man could render the country a greater service than he who should devise some plan by which the United States might be relieved from the ownership of this property, by some equitable mode. He would vote for a proposition to vest the lands in the States in which they stood, on some just and equitable terms, as related to the other States of the Confederacy. He hoped that, after having full information on the subject, they would be able to effect that great object. He believed that if those lands were disposed of at once to the several States, it would be satisfactory to all. In the general view he was willing not only to vote, but he should be solicitous to get information on the subject of the public lands generally, though he should not be willing to encourage additional expense.

The resolution was then agreed to.

On motion of Mr. TAZEWELL, leave of absence was granted to Mr. RANDOLPH for the residue of the session.

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*Creek Treaty—Fraud.*

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*Mr. Monroe's Accounts.*

On motion of Mr. WHITE, the Senate took up the bill for the relief of James Monroe, and the question being on the amendment proposed by the Committee of the Senate, to strike out the sum allowed by the bill from the House, and insert "\$29,518, in full of all demands against the United States,"

Mr. WHITE (Chairman of the Select Committee to whom the bill had been referred) entered at large into the reasons which had induced the committee to propose the amendment.

Mr. HARRISON moved to amend the amendment, so as to include interest on the outfit from the time Mr. Monroe was employed on the mission in 1803, till the time the outfit was paid.

Considerable discussion ensued, in which Messrs. SMITH, CHANDLER, HARRISON, HOLMES, TAZEWELL, HAYNE, and MACON, took part; and Mr. HARRISON having withdrawn his proposition, the question was taken on agreeing to the amendment proposed by the select committee, and decided in the affirmative, by yeas and nays, as follows:

YEAS.—Messrs. Benton, Berrien, Boulligny, Chambers, Chase, Eaton, Edwards, Findlay, Harper, Harrison, Hayne, Hendricks, Holmes, Johnston of Louisiana, Kane, Knight, Lloyd, Marks, Pickens, Rowan, Sanford, Seymour, Tazewell, Van Buren, White—25.

NAYS.—Messrs. Barton, Bell, Branch, Chandler, Clayton, Dickerson, King, Macon, Reed, Robbins, Ruggles, Smith, Williams, Woodbury—14.

The bill was then ordered to a third reading.

*Evening Session.*

The bill from the House for the preservation and repair of the Cumberland road, was read the first time; and on the question, "Shall the bill be read a second time?" a long discussion took place, in which Messrs. TAZEWELL, BENTON, HARRISON, SMITH, HENDRICKS, FINDLAY, MACON, KANE, BERRIEN, EATON, ROWAN, HOLMES, NOBLE, VAN BUREN, CHAMBERS, and WHITE, took part.

The question was decided in the affirmative, by yeas and nays, as follows:

YEAS.—Messrs. Barton, Boulligny, Chambers, Chase, Eaton, Edwards, Findlay, Harrison, Hendricks, Holmes, Johnston of Louisiana, Kane, Knight, Lloyd, Marks, Noble, Reed, Robbins, Ruggles, Seymour, Smith, Thomas, Williams—28.

NAYS.—Messrs. Benton, Berrien, Branch, Chandler, Dickerson, Harper, Hayne, King, Macon, Rowan, Sanford, Tazewell, Van Buren, White, Woodbury—15.

FRIDAY, May 19.

*Creek Treaty—Fraudulent Distribution of Money.*

On motion of Mr. VAN BUREN, the Senate proceeded to consider the report of the managers on the part of the Senate, at the conference on the disagreeing votes of the two

Houses, on the amendment proposed by the Senate, to the bill making appropriations to carry into effect the Treaty concluded between the United States and the Creek Indians, ratified on the 22d of April, 1826.

The report having been read—

Mr. VAN BUREN said he should state the circumstances of this case, and the views of the Committee of Conference. A treaty was made in this city, in which it was stipulated, on the part of the United States, that \$247,000, together with an annuity of \$20,000 a year, and other considerations, should be paid to the Creeks, as a consideration for the extinguishment of their title to lands in the State of Georgia, which the United States, under the cession of 1802, were under obligations to extinguish. The bill from the other House to carry this treaty into effect, directed that the money should be paid and distributed among the chiefs and warriors. That bill came to the Senate, and a confidential communication was made to the Senate, from which it appeared that strong suspicions were entertained that a design existed on the part of the chiefs who made the treaty, to practise a fraud on the Creek nation, by dividing the money amongst themselves and associates. An amendment was proposed by the Senate, which provided for the payment of those moneys in the usual way, and the distribution of them in the usual manner, and in the usual proportion to which the Indians were entitled. That amendment was sent to the other House, who, unadvised as to the facts which were known to the Senate, refused to concur in it, and asked a conference. The conferees, on the part of the Senate, communicated their suspicions to the conferees on the part of the House, and asked them to unite in an application to the Department of War, for information on the subject. This was accordingly done, and the documents sent, in answer, were a letter from the Secretary of War, and a report by Mr. McKenney. From that report it appeared clear and satisfactory, that a design thus existed on the part of the Indians by whom the treaty was negotiated, to distribute of the \$247,000 to be paid for the cession by the United States, \$159,750 among themselves, and a few favorite chiefs at home, and three Cherokee chiefs who had no interest in the property. Ridge and Vann were to receive by the original treaty, \$5,000 each. By this agreement of the distribution of the money, each was to receive \$15,000 more, making \$20,000 for each. Ridge, the father of Ridge who is here, was to receive \$10,000. The other \$100,000 was to be distributed, \$5,000, and, in some instances, \$10,000, to the chiefs who negotiated the treaty here—varying from one to ten thousand dollars each.

That this distribution would be a manifest fraud to the Creek nation, Mr. V. B. said, required no argument to elucidate. The conferees of both Houses were well satisfied that

this design existed, and of the obligation on the part of the United States, so far as Congress could do so, to defeat so unworthy a scheme. They differed as to the means that Congress ought to use to carry it into effect. [Here Mr. V. B. stated the two modes of distribution proposed by the two Houses.]

The two questions, then, Mr. V. B. said, that presented themselves in this view of the subject, were, had Congress the right to go to the extent proposed in the amendment made by the Senate? and, if they had, was it essential that they should do so? With respect to the right, he was, at first, under some doubt in regard to it; but a more careful examination had removed those doubts, and had satisfied him that the amendment of the Senate was warranted. The treaty directed that two hundred and forty-seven thousand dollars should be paid to the chiefs of the Creek nation, to be distributed among the chiefs and warriors of that nation. By the word chiefs, was it intended the chiefs in the nation, or the chiefs in the city of Washington? Those in this city say it was intended to be paid to them, and they ask of the Department of War that it should be paid to them in sums, counted out according to the distribution which had been stated. There was no difference on this subject between the conferees. They were of opinion that the money was to be paid to the chiefs of the nation in open council: that was the language of the treaty—the good sense of the treaty. The delegation who negotiated the treaty say it is to be paid to them; and that, in that view of the subject, they are warranted in the opinion expressed to them by the Secretary of War and the Superintendent of Indian Affairs. The conferees say, the intention of the treaty was, and its language imports, that this money should be distributed in the usual proportion, according to the just rights of the Indian warriors. There was nothing in the language of the treaty inconsistent with that idea. How ought the money to be distributed? Certainly on principles of justice amongst those Indians, according to their rights. What was asked on the part of the delegation? That it should be distributed among them for their personal advantage, and in conceded injustice to those they represented. They proposed to take one hundred and sixty thousand dollars, and to distribute it among themselves and the favored chiefs of the Cherokee nation. The simple statement of the pretence set up, was so against right and justice, that Mr. V. B. said they were bound to presume that such could never have been the intention of our Government. It was unjust and fraudulent. The chiefs say they have a right to do it, and they would abide by the consequence; but it was conceded to be a corrupt design. What was the intention of our Government? If that construction was given to this treaty which was sought for by these chiefs, the conclusion would be, that this Government intended to

counenance this fraud. The chiefs say such was the intention. Mr. V. B. said such could not have been the intention; and, as it could not be, the other conclusion is unavoidable. The intention was, that the money should be distributed according to the rights of the Indians constituting the Creek nation. It was fair and just, and not inconsistent with the language of the treaty. Such, Mr. V. B. said, would have been his view of the subject, if this had been a case between a civilized nation and this Government. But when their attention was turned to their rights over Indian property, the case stood upon a different principle. There had been great inconsistency amongst us as to the rights we had exercised over the Indians. At one time they depended on our mere will and pleasure; at another time we had treated them as an individual power. From the time of the formation of this Government, we had assumed the right to legislate, according to our will and pleasure, over their interests and property, so far as to protect them from fraud. On this principle, we had regulated all their trade. We had provided by law that they should not dispose of the lands they owned, unless in a specified form, and to the United States. We had gone further; by law, we had directed that the annuities due to them from us should be, without their consent, used to make remuneration for damages done by the Indians. These three points of legislation, Mr. V. B. said, covered the whole ground. What was the case now before the Senate? There was a fund of \$247,000, belonging honestly to the Creek nation. It could not be denied, because it was for their lands. The fact was proved that there was an intention to defraud them of this money. It had been said that we had no right to provide by law to prevent an event of that description, by directing that the money should be thus distributed, according to the principles of justice. Mr. V. B. said it would be sheer squeamishness to hesitate now as to the power.

The amendment proposed by the Senate holds the Secretary of War responsible for this money to these Indians, according to their just rights. The amendment from the House supposes that may be effected, and this money paid, in open council of the chiefs, when summoned in the usual way. The conferees on the part of the Senate believed that measure would fall short of obtaining the desired end; that the amendment of the House did not go far enough, but, under the circumstances of the case, Congress should go farther, and see that the money was properly distributed. They ought to see that this money went actually into the hands of the different chiefs and warriors—then, if they chose to give it to the Cherokees, or to dispose of it in other ways, the United States would have done their duty.

Mr. V. B. said, in his judgment, the character of the Government was involved in this subject, and it would require, under the cir-

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*Creek Treaty—Fraud.*

[SENATE.]

circumstances of this case, that they should take every step they could rightfully take, to exculpate themselves from having, in any degree or form, concurred in this fraud. The sentiment of the American people where he resided, was, and had been, highly excited on this subject; they had applauded, in the most ardent manner, the zeal manifested by the Government to preserve themselves pure in their negotiations with the Indians; and though he was satisfied—though he deemed it impossible to suppose for a moment that Government could have countenanced the practice of this fraud, yet there were circumstances in this case which required exculpation. Between the negotiation of the treaty and the negotiation of the supplementary article on which the treaty was finally adopted, all these circumstances were communicated to the Department of War by the two Cherokees. Mr. V. B. said it was not his purpose, because the necessity of the case did not require it, to say what the Secretary of War ought to have done, or to censure what he did do, when the information was given to him. He had known him many years, and there was not an honest man, or a man more devoted to his country, than that gentleman was. Mr. V. B. said it was not for him to have said what should have been the course of the President of the United States, if the information had been given to him on the subject. It could not fail to make a mortifying and most injurious impression on the minds of the people of this country, to find that no means whatever were taken for the suppression of this fraud. There was, and there ought to be, an excitement on the subject in the public mind. The members of the Senate had seen it. It had displayed itself strongly and strikingly on the point of this controversy between Georgia, the United States, and the Creeks. The settlement of that controversy was applauded from one end of the Union to the other. So far as the State of Georgia was concerned, she claimed that the title to all the Indian lands within her limits, should be extinguished by the United States, according to the obligation of the cession of 1802. This question had been settled—and how? Every thing that had been done, so far as Georgia was concerned, by the treaty of the Indian Springs, is believed to have been done by this treaty. Every foot of land is believed to have been ceded. It was the understanding of the delegation of the State of Georgia, that this treaty extinguished the Indian title to all the land.

Mr. BERRIEN rose and said, it was not the understanding of the delegation of the State of Georgia, that this treaty ceded all the land. That fact had been stated to the Senate by himself in his place. In a certain event, it was rendered probable that the lines to which the additional article of the treaty extended, would embrace all the land, but, according to the best information, it was his belief that the State of

Georgia would lose one million of acres by the new treaty.

Mr. VAN BUREN resumed. It was stated to the Senate, when the treaty was under consideration, that the Indians were willing, and designed to cede to Georgia all their lands. The controversy had been settled—and how? According to his view of the subject, every thing, so far as the State of Georgia was concerned, by the treaty of the Indian Springs, had been done by this treaty, with the single addition of a little more money to be distributed among the chiefs. Mr. V. B. said he had not a doubt in his mind, that the same application of these same means might, at any time, have settled the controversy. What was the subject that produced all this excitement? What was the objection to the treaty of the Indian Springs? It was made by an insufficient number of Indian chiefs, and there was reason to suspect that undue influence had been exercised. That there was not a sufficient number of chiefs, was a matter of contestation. On the subject of fraud, what were the evidences? On the face of the treaty, the United States gave to McIntosh an unreasonable amount of compensation. That was the length and breadth and depth of all the allegations of fraud. Compare that with the treaty which was now about to be carried into effect. It was stated in the report of the Superintendent of Indian Affairs, that, when the negotiation was opened between the War Department and the Indians, to extinguish their title to the lands, they refused to give all their lands within the State of Georgia; they refused to go beyond the Chatahoochie. On being pressed, they said they were limited by their instructions, and could not go any farther. In the documents communicated to Congress, that fact was stated. The treaty had been finally made to settle this controversy, confessedly without power on the part of the Indians, to go as far as they had gone. Compare the Indian Springs treaty with that. The suspicion of undue influence in negotiating that treaty, Mr. V. B. said, was founded on the unreasonable reservation to McIntosh. Before the present treaty was consummated, the fact was communicated to the Government that a contrivance was on foot to reserve to certain chiefs a large portion of the money to be paid for these lands. The proof on this subject was as had been stated. Mr. V. B. said they must appear before the people of the country with this fact before them, that, under the eye of this Government, the treaty had been negotiated in fraud. He did not state the facts to impeach any one, but to show the Senate the high responsibility that rested on them, to go as far as possible to suppress the contemplated fraud, and entirely extinguish this plan, that the Government might be protected from any future imputation of having had any hand in it. It was in that view he had said, and would repeat, and with that remark dismiss the subject, that the honor of the nation was con-

earned. Mr. V. B. said he should not be willing to persist in the amendment of the Senate, to the loss of the bill; but would rather take the next best thing that offered, by taking the amendment of the House, but would wish first to make the attempt to induce the House to adopt the amendment of the Senate.

To bring the subject more distinctly before the Senate, Mr. V. B. then offered a resolution for the Senate to insist on its amendment.

Mr. HARRISON said the proposition of the House not only comported with the treaty, but it met the view of the Senate; the only difference between the two propositions was, that the one directed that the distributions should be made in the usual proportion to the chiefs and warriors; the other, that it should be made in the presence of the chiefs and warriors—in the presence of the great council of the nation. When this subject was first before the Senate, and a confidential communication was made that such a fraud was in contemplation, he was anxious that every measure should be taken to obtain justice. Mr. H. said he thought there was no better way than that of paying the chiefs and warriors in presence of the assembled nation. The only error the Secretary of War had committed, had arisen from his not being acquainted with the usual manner of conducting Indian business. Mr. H. said he regretted, after the declaration which the gentleman from New York (Mr. VAN BUREN) had made of his confidence in the integrity of that officer, that he should say that some stigma would remain on the Government unless something should be done to clear the Government of that stigma. Mr. H. could not conceive that such a thing was necessary. The people of the United States would accord with the opinion given by the gentleman from New York, in relation to the character of that officer, and the arrangement of this affair; and, though an error of judgment might be imputed to him, the nation would determine that it was an error of the head and not of the heart. No better mode could be devised to do justice to the individuals and to the Indian nation, than that proposed by the other House.

The government of the Indian tribes in this country, Mr. H. said, was not well understood. It is not the government of the chiefs—the chiefs are the diplomatic agents, authorized to make treaties, but the consequences of the treaty are always passed in review before the assembled nation, and the nation is present, in every instance, when the proceeds of the treaty are paid. This secures them from any possibility of imposition on the part of the Government, or of any collusion on the part of the chiefs. Mr. H. said he was not present during part of the time that the gentleman from New York was speaking. It might be possible he had misunderstood the object of the amendment proposed by the committee; but there could be no possibility of any error in this matter, if the proposition of the House were

adopted; the terms of the treaty would be strictly complied with, and the nation would be satisfied; because, when the money was paid in the presence of the nation, there could be no fraud. Mr. H. objected to the term "usual proportion." It might have been the practice to distribute in particular proportion, but the distribution always took place in a full council of the chiefs. If gentlemen could show there was any possibility that a fraud was likely to be committed in the course which had been pointed out by the House, or that there was any possibility of a stigma attaching to the Government in consequence of pursuing that course, he would accord with them. It appeared there was an injustice meditated; but by whom? Not by this Government. It was a matter of indifference to them to whom the money was paid. Their object was to comply with the stipulations of the treaty—to satisfy the State of Georgia and the Indians. That had been substantially done. In regard to the observation which had been made, of its compromising the character of this Government, that they had made a treaty with the Indians extending the cessions of the Indians beyond what they knew the Indians were authorized to make, Mr. H. would say that such a thing was not uncommon, either with the Indians or diplomatists. If diplomatists entered into a negotiation which they were not strictly authorized to do by their Government, it was their own affair; and it depended afterwards on the acquiescence on the part of the Government who sent them. If the warriors and remaining chiefs would show to this Government, that it was not their intention thus to extend the cession, then, Mr. H. said, much as he valued this treaty, and the good consequences arising from it, he thought the Government would be bound in honor to do that which they would do if they were treating with a civilized nation—to satisfy them for the farther cession, or to expunge this part of the treaty. When the compensation was about to be given to the chiefs assembled, if they protested against that part of the treaty, Mr. H. said, as a man who valued the reputation of his country, he should be one of those who would declare that part of the treaty to be null and void, or rectify the error that had been committed. What could the Secretary of War do? On whom could he rely? He could resort to no book that could show him the power that was given to the Indian chiefs in matters of this kind. It varied amongst the Indians. Mr. H. concluded by expressing his opinion that it would be perfectly safe to follow the recommendation of the committee of the House of Representatives. The money would be paid to those who were authorized to receive it, and the mode in which it was to be paid, would be a sufficient guarantee that no fraud had been committed on them.

Mr. HOLMES said he should accede to the report of the Committee of Conference. They

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recommended that the committee should be instructed to insist on the amendment. If the proposition made was to recede from the amendment, it would be in order to propose an amendment. If the Senate were to recede from their amendment, and to propose nothing more, then the bill would go to the House as unamended, and they might pass it without any amendment at all. The Senate could act on the bill or on the report of the committee.

As regarded the two propositions for the distribution of the money, it would seem at first view that there were two objections to the mode pointed out in the amendment of the Senate. How was it to be ascertained what was the usual proportion in the nation? If that could be ascertained, it would seem to put it out of their power to make any other distribution. The amendment of the House gives them that power. Mr. H. said he thought the safest way would be to have the distribution made by the nation. Either the one or the other of the amendments ought to prevail, from the facts which had been disclosed. The better way would be to take the amendment of the House, and to pass the bill in that way. If the agent paid the money to the assembled nation, they would have it in their power to decide which way they pleased. It would gratify them more—it would please them better—that the money should be paid to the chiefs and warriors assembled. If they are willing to make such an iniquitous distribution of their property, we have no right to complain; but it is not probable that they will do so. It would be better, Mr. H. said, to have it made in such a way as would satisfy them, and, though he should vote for either amendment, he thought it would be better to recede.

Mr. BENTON said, that, after the explanation of the views of the Committee of Conference which had been given by the Senator from New York, (Mr. VAN BUREN,) he would limit himself to a statement of facts on two or three points, on which references had been made to his personal knowledge.

The Secretary of War had referred to him, in his letter to the committee, as knowing the fact, that the Secretary had refused to give private gratuities to the Creek chiefs to promote the success of the negotiation. The reference was correct. Mr. B. had himself recommended to the Secretary to do so; it was, however, about forty days after the treaty had been signed. He referred to a paper which fixed the date to the 9th or 10th of March, and the treaty had been signed in the month of January preceding. It was done at the time that Mr. B. had offered his services to procure the supplemental article to be adopted. The Secretary entirely condemned the practice of giving these gratuities. Mr. B. said he had recommended it, as the only way of treating with barbarians; that, if not gratified in this way, the chiefs would prolong the negotiation, at a great daily expense to the Government,

until they got their gratuity in one way or other, or defeated the treaty altogether. He considered the practice to be sanctioned by the usage of the United States; he believed it to be common in all barbarous nations, and in many that were civilized, and referred to the article in the Federal constitution against receiving "*presente*" from foreign powers, as a proof that the convention thought such a restriction to be necessary, even among ourselves.

Mr. B. also adverted, in answer to something which had been said in previous debates, to the part he had acted in getting the supplemental article adopted. What he had done was with the knowledge and consent of the Secretary. It amounted to nothing more than producing a conviction in the minds of the Creeks themselves, *that it would not be advantageous for them to hold any land in Georgia*; this being accomplished, the consideration was left to be adjusted by others. Not a word with respect to its amount had passed between Mr. B. and any one of the Creeks or Cherokees. They agreed, upon the representation of Mr. B., to give up *all* the land claimed by the Creeks in Georgia; but, when they came to reduce that agreement into the form of an article, a difficulty occurred; *the line between Georgia and Alabama had never been ascertained*; and the Indians were unwilling to agree to a line, the course and position of which was unknown to them, and which was to be fixed by a power over which they had no control, and which might run, they knew not how deep, into their country. They were willing to agree to the line where it was believed to be; and, accordingly, two points, named by a part of the delegation from Georgia, as those which would include all the land in Georgia, were agreed upon, and inserted in the supplemental article. It was intended to cede all; it was believed that all was ceded; the exact truth could not be known until the line was run. He considered the unwillingness of the Indians to agree to an unknown line as natural and reasonable; and, if any mistake had occurred, there was certainly no blame on either party. The Indians agreed to the points indicated by gentlemen from Georgia, and these gentlemen, to his personal knowledge, had expended great pains in consulting maps, and in referring to the knowledge of individuals to fix the points correctly.

The time at which Mr. B. had offered his services to aid this negotiation, had appeared to him to be eminently critical, and big with consequences which he was anxious to avert. It was after the committee had resolved to report against the new treaty, and before they had made the report to the Senate. The decision, whatsoever it might be, and the consequent discussions, criminations, and recriminations, were calculated to bring on a violent struggle in the Senate itself; between the Senate and the Executive; perhaps between the



two Houses, (for a reference of the subject to both would have taken place,) and between one or more States and the Federal Government. Mr. B. had concurred in the report against the new treaty, because it divested Georgia of vested rights; and, though objectionable in many other respects, he was willing, for the sake of peace, to ratify it, provided the vested rights of Georgia were not invaded. The supplemental article had relieved him upon this point. He thought that *Georgia* had no further cause of dissatisfaction with the treaty; it was *Alabama* that was injured by the loss of some millions of acres, which she had acquired under the treaty of 1825, and lost under that of 1826. Her case commanded his regrets and sympathy. She had lost the right of jurisdiction over a considerable extent of territory; and the advantages of settling, cultivating, and taxing the same, were postponed, but, he hoped, not indefinitely. But these were *consequential* advantages, resulting from an act which the Government was not *bound* to do, and, though the loss of them was an injury, yet this injury could not be considered as a violation of vested rights; but the circumstance certainly increased the strength of her claim to the total extinction of the Indian tribes within her limits; and, he trusted, would have its due effect upon the Government of the United States.

The third and last point on which Mr. B. thought reference to his name had made it proper for him to give a statement, related to the circumstance which had induced the Senate to make the amendment which had become the subject of the conference between the two Houses. He had, himself, come to the knowledge of that circumstance in the last days of April, some weeks after the supplemental article had been ratified. He had deemed it to be his duty to communicate it to the Senate, and do it in a way that would avoid a groundless agitation of the public feeling, or unjust reflections upon any individual, white or red, if, peradventure, his information should turn out to have been untrue. He, therefore, communicated it to the Senate in secret session; and the effect of the information was immediately manifested in the unanimous determination of the Senate to adopt the amendment which was now under consideration. He deemed the amendment, or one that would effect the same object, to be called for by the circumstances of the case, and the relative state of the parties. It was apparent that a few chiefs were to have an undue proportion of the money—they had realized what he had foretold to the Secretary; and it was certain that the knowledge of this, whenever it should be found out by the nation, would occasion disturbances, and, perhaps, bloodshed. He thought that the United States should prevent these consequences, by preventing the cause of them, and, for this purpose, he would concur in any amendment that would effect a fair distribution of the money, or any

distribution that was agreeable to the nation in open council.

Mr. TAZEWELL said it seemed to him that the question before them was a question of mere form. The proposition in which they were all agreed, was this: A deputation of the Creek nation had been accredited here, as the representatives of that nation, to make a treaty, and that they had, amongst themselves, confederated to practise a gross fraud on those who sent them here. This fraud was known to the Government of the United States before the treaty was concluded, and, notwithstanding that fact, this treaty was concluded under that form of expression which might authorize the consummation of this fraud. In this state of things, intimation was given to the Senate of the existence of this fraud, and the probable consequences of it. Immediately that the bill came from the other House, making an appropriation to carry the treaty, on one side conceived in fraud, into effect, an amendment was proposed, on the part of the Senate, to prevent the consummation of this iniquitous scheme. This amendment was sent to the House; it was disagreed to there, and a committee of conference took place. The conferees on both sides were satisfied of the existence of this fraud, and of the consequences which would attach to the United States if it could not be prevented, and they recommended different modes of prevention which should be adopted. The amendment proposed by the Senate is, that the sum of money to be paid to the Creek nation should be paid under the direction of the Secretary of War, to the Creek nation, in such proportion, according to the mode in which the annuities to the nation have been in the habit of being paid. This is an answer to the gentleman from Maine, who asked how they were to know in what proportion they were paid. There would be no difficulty on the subject. There is a fixed rule known to this Government and that nation—acquiesced in by that nation—and the Secretary of War, on his responsibility, is directed to carry that fixed rule into operation. On the part of the other House, it is proposed this sum should be paid to the chiefs of the nation by a special agent, and that this special agent shall be under the direction of the Secretary of War, who is to direct the money to be paid in full council of the nation, to be convened on full notice for that purpose. Some gentlemen (Mr. T. said) were of opinion there was no difference between the two modes. He thought there was an important difference. In the one case, the responsibility rests on the Secretary of War, and whom he may choose; in the other, it is mandatory on him to appoint a special agent to carry it into execution. The Senate (Mr. T. said) put the responsibility where it ought to rest—on the Head of the Department—but the House proposed to have an intermediate one. The Senate referred to a fixed rule—the House did not. According to their proposition, all

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that was to be done was to convene the nation, pay the chiefs in presence of the nation, and the hands of the Government would be washed. The proposition of the Senate was more guarded, and, therefore, ought to be agreed to.

The gentleman from Ohio had said that it was unimportant to whom the money was paid. Mr. T. said it was of much importance to the United States to whom it was paid. It was important that it should be paid to those to whom the land belonged, in the proportion in which their annuities had been heretofore paid. If these chiefs were paid, and the distribution was not effected, the moment the nation were informed of the fraud which had been committed on them by their own chiefs here, and that this fraud was made known to the United States before the treaty was completed, and had not been guarded against by any act of Congress, an Indian war would most probably take place, and it would be difficult to avoid the consequences which naturally result from every Indian war. Therefore, to preserve harmony, we could not be too cautious in distributing the money.

Mr. T. said he could not consider any of these engagements entered into with the Indian tribes, bound us down in the same way as stipulations entered into by a civilized people. We made a treaty—it was law to them; and we agreed it should be law to us. It did not become a law by virtue of an exchanged assent, as among an enlightened people. We are nothing more than the guardians of these people. They had, Mr. T. said, manifested more skill in diplomacy than the United States. They had completed their affairs more dexterously than we had ours; and the time was not far distant when this thing would be disclosed to the world, that these two Cherokee boys sent here, had completed a treaty on better terms for the Creeks, and worse terms for the United States, than all the diplomatic functionaries employed. Our benevolence, our magnanimity, our justice, and any other good quality we might have, required that this fund should be distributed amongst them, according to what we considered to be the principles of justice. The nation owned the land; the money was to be in place of the land; that money, therefore, must go to those who owned the land. When we knew it was going into the hands of a set of people who had laid a plan by which they were to get forty thousand dollars exclusively to themselves, it was important that we should save this forty thousand dollars for the Creek nation, for whom it was intended, and to take care that the Cherokee, who had not ceded one inch of land, should not receive any part of that bounty which was intended for the neighboring nation. We had nothing to do with that affair, except to place the money in the hands of the Creek nation, and let them distribute it according to what they considered justice on their part towards the Cherokees.

In the printed document which was now before the Senate, Mr. T. said, there was matter of fact which appeared to justify a strong inference, that these Indians wished our Government to believe, or were themselves instructed, that they were not at liberty to cede one foot of land beyond the Chatahoochie; yet, by the supplementary article, they had made such a cession. He wished the Senate had more information on this subject. He should not propose any further call on the Department, when the session was drawing so near to a close; but he believed that, within the Department of War, there were, at this moment, documents to show that a treaty, very different from that which had been concluded, might have been concluded, and far more to the benefit of the United States.

It had been bruited abroad, Mr. T. said, for many months past, that this treaty of the Indian Springs was objected to, because it was negotiated in fraud. Though the Senate had not acted directly on that suggestion, that treaty had been dispensed with without a particle of proof of fraud, and this new treaty had been taken up; and the documents went to show that it was signed by a large party to this treaty, with a full knowledge that the negotiators on one part were disposed to practise fraud on those that sent them here; and that this fact was made known to the Government of the United States. On this transaction, Mr. T. said, he should make no comment.

Mr. BRANCH said, that, while he would concur with the gentlemen from New York and Virginia, in any measure to detect fraud, he must dissent from the gentleman from Virginia in the latter part of his observations. That gentleman had said that the first treaty had been set aside without evidence of fraud. Mr. B. said it was not his purpose to enter into an investigation of this point; the reason why they had not that evidence, was because they refused to look at it; the evidence was most ample and abundant in the Department of War; but the Senate had shut their eyes on it. That evidence was taken by men high in the confidence of this country, for integrity, talent, and firmness—evidence which he should not descant upon, but which was to his mind conclusive. If any gentleman thought proper to refuse a call on the Department for it, the fault was his. Mr. B. said he should vote for any proposition which had for its object the detection of fraud, either in this treaty or any other. He was opposed to the treaty of the Indian Springs, because he believed it had been executed in fraud; and the circumstances hovering about this treaty, were sufficiently strong to excite suspicion. He was willing it should be probed to the bottom.

Mr. BERRIEN next addressed the Senate. He said, I touch this subject with extreme reluctance. It throws me back upon recollections to which it is unpleasant to recur. It awakens feelings which I have no disposition to indulge.

But, can I be silent? My colleague and faithful coadjutor in this cause, has been called away by the pressure of domestic calamity. I am the sole representative of Georgia on this floor. The Senate will expect from me, sir—what, with all possible respect for the Senate, is infinitely more important to me, the people of Georgia, my own immediate constituents to whom alone I acknowledge responsibility, they will expect from me, an expression of their feelings on this occasion. I obey.

You have arrived at the last scene in the present act of the great political drama of the Creek controversy. In its progress, you have seen two of the sovereign States of the American Confederation—especially, you have seen one of those States, which has always been faithful and forward in the discharge of her duties to this Union, driven to the wall, by the combined force of the Administration and its allies, consisting of a portion of the Creek nation, and certain Cherokee diplomatists. Hitherto, in the discussions before the Senate on this subject, I have imposed a restraint upon my own feelings under the influence of motives which have now ceased to operate. It was my first duty to obtain an acknowledgment, on this floor, of the rights of Georgia, repressing, for that purpose, even the story of her wrongs. It was my first duty, sir, and I have sacrificed to it every other consideration. As a motive to forbearance, it no longer exists. The rights of Georgia have been prostrated. The Senator from New York deceives himself, when he supposes that she has acquired all the land within her limits. The Senate, too, acted under this impression in the ratification of the new treaty, and were deaf to my solicitation to amend that instrument by an article which should, in *express terms*, relinquish to Georgia the lands within her boundary. Gentlemen shrunk from an investigation of the treaty of the Indian Springs, and feared to alter the one submitted to them, lest, by its failure, that investigation might become necessary. Yes, sir: the rights of Georgia have been prostrated. They have fallen before the power of the Administration, and the fraud and the insolence of the savages whom they have sustained and cherished—of those savages, by whom the Administration have been made the conscious instruments of the fraud which they themselves have concerted against their own brethren of the forest. The Administration have been passive spectators of the insolence with which, in the official character they have given to them, those savages have beard the Representatives of Georgia, even in the official journal of the Government. Why, then, should I be silent? I have the evidence of oppression and of fraud, and accumulated wrongs prompt to their exposure.

It was a duty scarcely less sacred to protect the friends and followers of that gallant chieftain who had sealed with his blood his devotion to Georgia and to this Union. That also is finished. I invoke the testimony of no man

to prove with what fidelity it has been performed. The hour of retribution has come. I will not imitate, I am incapable of imitating, the example of those who have foully calumniated a people whose honor is so justly dear to me; but, under the responsibility of my station—under my personal responsibility, if you will—I am free to speak, and I will speak, of the wrongs of Georgia. I shall be brief, for the occasion requires it; and my own feelings will prompt me to turn as quickly as I may from so disgusting a subject.

Sir, in the progress of that controversy, which has grown out of the treaty of the Indian Springs, the people of Georgia have been grossly and wantonly calumniated, and the acts of the Administration have assisted to give currency to these calumnies. Her Chief Magistrate has been traduced. The solemn act of her Legislature has been set at naught, by a rescript of the Federal Executive. A military force has been quartered on her borders, to coerce her to submission; and, without a trial, without the privilege of being heard, without the semblance of evidence, she has been deprived of rights, secured to her by the solemn stipulations of treaty.

When, in obedience to the will of the Legislature of Georgia, her Chief Magistrate had communicated to the President his determination to survey the ceded territory, his right to do so was admitted. It was declared by the President, that the act would be “wholly” on the responsibility of the Government of Georgia, and that “the Government of the United States would not be in any manner responsible for any consequences which might result from the measure.” When his willingness to encounter this responsibility was announced, it was met by the declaration, that the President would “not permit the survey to be made,” and he was referred to a Major-general of the army of the United States, and one thousand regulars. The trained bands of the Empire were to be employed to coerce him to submission. Why this paltering? Above all, sir, why this menace?

The highest judicial tribunal of the United States had long since decided the right of Georgia to grant and sell the lands, which she was about to survey. Independently then of any title acquired by the treaty of the Indian Springs, unless there is any one prepared to affirm that the right to grant does not involve the right to define the limits of the thing granted, the act which she was about to perform, was manifestly within her competency. When this proposition, thus clear and simple in its principle, shall come to be understood by the people of the United States, by what term of reprobation sufficiently strong, will they designate the menace to employ the military force of this Union to prevent a sovereign State from the exercise of her unquestionable right?

To this lawless mandate, her Chief Magis-

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trate submitted. Unable to repress the feelings, which had been excited by the contumely of the Government and its agents, he nevertheless respected the peace of the Union, and the tyranny was unresisted. The Senate will permit me to say a passing word of this calumniated individual—the friend and companion of my earlier years—whose name has been associated in the journals devoted to the Administration, with the epithets of madness and of treason. Sir, there is no man, however vindictive his feelings, however led astray by the reveries of a malevolent fancy, who, in the moment of retirement, communing with God and his own conscience, had the hardihood to avow to himself a belief of the calumnies which were uttered against the Chief Magistrate of Georgia. Love for his country—indignation against her oppressors—these are the qualities of the patriot—these are the qualities which he has exhibited in this controversy.

The murder of that illustrious chieftain, who, through life, had manifested a generous, gallant devotion to the people of this Union, is another incident in this drama, on which that people will, ere long, affix the seal of their reprobation. It is one of those events which grew out of the countenance given by the Federal Government to the opposition to the treaty of the Indian Springs. It was naked murder. The shallow pretence of a law, and the judgment of a Council, was got up *ex post facto*. I appeal to those who are conversant with the laws and customs of the Indians, if such a law could have existed without the knowledge of the agent? I appeal to them to say, if Indian Councils are not always open? To those who know the character of the Council which was assembled before the death of McIntosh, how many friends he had in it, I appeal. Let them say, if it would not have been an act of madness for his intended murderers to have made known their object in that Council? Yes, sir, I repeat the declaration, it was naked murder. This gallant chieftain fell, like Alcibiades, by the hands of the midnight assassin; and, like the emissaries of the Persian Satrap, his assassins feared to come within the reach of his valiant arm.

The murder of McIntosh—the defamation of the Chief Magistrate of Georgia—the menace of military force to coerce her to submission—were followed by the traduction of two of her cherished citizens, employed as the agents of the General Government in negotiating the treaty—gentlemen, whose integrity will not shrink from a comparison with that of the proudest and loftiest of their accusers. Then the sympathies of the people of the Union were excited in behalf of “the children of the forest,” who were represented as indignantly spurning the gold, which was offered to entice them from the graves of their fathers, and resolutely determined never to abandon them. The incidents of the plot, being thus prepared, the affair hastens to its consummation. A new treaty is negotiated here—a *pure and spotless treaty*. The

rights of Georgia and of Alabama are sacrificed: the United States obtain a part of the lands, and pay double the amount stipulated by the old treaty; and those pure, and noble, and unsophisticated sons of the forest, having succeeded in imposing on the simplicity of this Government, next concert, under its eye, and with its knowledge, the means of defrauding their own constituents, the Chiefs and warriors of the Creek Nation.

For their agency in exciting the Creeks to resist the former treaty, and in deluding this Government to annul it, *three Cherokees, Ridge, Vann, and the father of the former*, are to receive FORTY THOUSAND DOLLARS of the money stipulated to be paid by the United States to the chiefs of the *Creek* nation; and the Government, when informed of the projected fraud, deems itself powerless to avert it. Nay, when apprised by your amendment, that you had also detected it, that Government does not hesitate to interpose, by one of its high functionaries, to resist your proceeding; by a singular fatuity, thus giving its countenance and support to the commission of the fraud. Sir, I speak of what has passed before your eyes, even in this hall.

One-fifth of the whole purchase money is to be given to *three Cherokees*. TEN THOUSAND DOLLARS reward one of the heroes of Fort Mims—a boon which it so well becomes us to bestow. A few chosen favorites divide among themselves upwards of ONE HUNDRED AND FIFTY THOUSAND DOLLARS, leaving a pittance for distribution among the great body of the chiefs and warriors of the nation. But it is the price of blood—of the blood of McIntosh. Shall it not be freely distributed among those who shed it? And think you, the chiefs and warriors against whom this audacious fraud is meditated, will tamely acquiesce in it? Armed with this damning proof of the corruption of their adversaries, will the followers of McIntosh sleep? Sir, if one spark of his gallant spirit yet lingers among them, especially if it burns as it should burn in the bosom of that youthful chieftain, whose high prerogative it is to vindicate a father's memory, the name of the white warrior of Muscogee will again become the terror of his foes.

But the Administration, though it condemns the fraud, thinks that we have no power to prevent its consummation. What, sir, have we no power to see that our own treaty is carried into effect? Have we no interest in doing so? Have we no power? We have stipulated for the payment of two hundred and forty-seven thousand dollars to the chiefs of the Creek Nation, to be distributed among the chiefs and warriors of that nation. Is not the distribution part of the contract as well as the payment? We know that a few of those chiefs, in fraudulent violation of the rights secured by that treaty, are about to appropriate this money to themselves. Are we powerless to prevent it? Nay, must we, too, suffer ourselves to be made the conscious instruments of its consummation? We have made a bargain with a savage tribe,

which you choose to dignify with the name of a treaty, concerning whom we legislate with their consent, or without it, as it seems good in our eyes. We know that some ten or twenty of them are about to cheat the remainder. We have the means in our hands, without which their corrupt purpose cannot be effected. Have we not the right to see that our own bargain is honestly fulfilled? Consistently with common honesty, can we put the consideration money of the contract into the hands of those, who we know are about to defraud the people who trusted them? Sir, the proposition is absurd.

But have we no interest in preventing this fraud? What, if the great body of the nation, disclaiming the validity of a treaty, the consideration money for which they have never received, and which you have paid with a knowledge of the fraud about to be practised on them, shall refuse its execution, will you not be in a worse dilemma, than that from which you have endeavored to escape, by annulling the treaty of the Indian Springs?

Will you say it is their own affair; that they have trusted these persons to negotiate the treaty, and therefore they are entitled to receive the money. The answer is plain. *They* trusted these men, believing them to be honest. Now *you* know them to be otherwise.

Will you shelter yourselves under the powers granted to the Delegation? and did you not dictate them? Was not the council convened by your order? Did you not require the appointment of the Delegation, draught their commission, and direct its execution? Was it a free-will offering of the Creek Nation? Was it not rather the act of these very men, who had excited the Creeks to resist the old treaty, and who, by means of this corrupt agreement, are now about to enjoy the fruits of their speculation on the simplicity of this Government?

Sir, you have the power, and it is your interest, and it is your duty to exercise it. You legislate for these people as you will—you assume a guardianship over all the Indian tribes, for the preservation of the public peace. This consideration alone is sufficient to authorize and to demand your interference. Suffer this fraud to be consummated—this corrupt distribution to be carried into effect, and the war-whoop will again be heard in the nation, and the tomahawk and the scalping knife will do their office.

It is another miserable suggestion, prominently put forth in the report, that the delegation individually agreed to the distribution. Yes, sir, *those who were to share the spoils, consented to the commission of the fraud.* But mark the progress of this affair; I refer to the report of the Superintendent. When Ridge was first asked if the members of the delegation were apprised of it, he answered "no; but Opothleyoholo and Charles Cornells knew it, and that was enough." Subsequently their assent was obtained—and how? Look to the agreement. Each member of the delegation,

not otherwise provided for, was to receive FIVE THOUSAND DOLLARS. Who does not perceive that this was the price of their assent?

And was this intended fraud known to the Administration? Did they negotiate with men thus profligate and corrupt, knowing them to be so? And did they conceal their knowledge of the fact from the Senate, the constitutional advisers of the President? Leaving them to ratify in ignorance, a treaty which had been negotiated in fraud? I refer again to the report. Ridge presented their paper containing this fraudulent agreement, at the time of signing the first treaty, which was on the 24th of January last. The next day it was submitted to the Senate. Afterwards, on the 31st of March, the supplemental article was negotiated and also submitted; and, on the 21st of April, the treaty was ratified. From the 25th of January, then, until the 21st of April, this treaty being before the Senate, the Administration knew, and withheld from that body the knowledge of the fact, that the greater part of the money stipulated by that treaty, to be distributed among the chiefs and warriors of the nation, was to be fraudulently kept from them, and appropriated to some ten or twenty chiefs. In this ignorance the Senate was suffered to ratify this treaty, which, with a knowledge of the fact, they would have spurned. Nay, more. When the Senate had detected the fraud, and guarded against it by the amendment under consideration, the Administration interfered to resist that amendment. The Senator from Missouri, influenced by a desire to terminate this unhappy controversy, in a mode consistent with the rights of Georgia, and least embarrassing to the General Government, suggested the propriety of presents to the chiefs, as a means uniformly resorted to, in negotiating with savage tribes. This the Department "peremptorily refused;" and yet, at the moment of this refusal, knew, and had long known, the projected fraud, which has at length happily been brought to light. I make no comments on this statement; I present it on this floor to the American people: they will determine the character of the transaction.

But I will relieve the Senate, so far as I am concerned, from the further consideration of this disgusting subject. To me it is indifferent which of these amendments shall prevail. I believe that adopted by the Senate will be most efficient, and, as a member of the Committee of Conference, I have not felt authorized to yield an important principle, without its sanction. My chief object has been to expose the fraud, and thus to prevent its consummation, and that purpose has been fulfilled.

I leave to those who have directed this controversy, the cheering reflection, that they have trampled on the rights of Georgia, which they were bound to protect; and calumniated her citizens, their agents, whose honor it was their duty to guard: that they have imputed fraud to the old treaty, and have shrunk from the

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proof of it; and that the operations which have eventuated in that compact, which we are now called upon to consummate, were commenced in blood, and have terminated in corruption.

Mr. KING said he could not consent to give his vote without saying one word. When this matter was brought before Congress, at an early period of the session, they were taught to believe, from all the documents submitted to the Committee on Indian Affairs, that great exertions had been used to bring about an accommodation, and to save them from the necessity of going into an examination of the old treaty which was said to be founded in fraud and corruption. The committee had taken the treaty submitted to them into examination, and came to the conclusion that, as it did not cede all the lands within the limits of Georgia, they could not constitutionally ratify it, and returned it to the Senate. A letter was addressed to the War Department, acquainting the Secretary of the disposition of the committee, and the course that would be adopted. It was in this state of things that the chiefs were again assembled, and, though they had informed the War Department that, under no circumstances whatever, could they extend the limits beyond what they were extended by that treaty, yet, after great exertion, they brought out a supplementary treaty, which, we were told, embraced all the lands in Georgia. I stated distinctly, that, if any treaty was to be formed short of that of the Indian Springs, I protested against it. I asked that the whole matter might be submitted to Congress, and that they might determine on the fraud. The former treaty had been ratified; it became the supreme law of the land. Its adversaries say it is founded in fraud. Where is the evidence they have given us of it? They have given none. When they found it would be rejected, and that necessity forced on them to submit to it, or to produce the evidence, they got up this supplementary treaty, which they thought would do away the objections on constitutional grounds. I went further than the Secretary. I knew, from the disposition of the individuals, that there was a great desire to get clear of this investigation, and that they would go great lengths to effect it. I stated to him that, if the usual course was resorted to, and the proper means were adopted to conciliate the chiefs, an arrangement might be made which would be satisfactory to all parties. He refused to resort even to the distribution of the common presents. He said it was bribery and corruption; it was base; he would have nothing to do with it, nor would he delegate the power to another. With a full knowledge of the most infamous frauds ever committed by a set of Indian chiefs, he entered into a treaty. What was this money? It was a consideration for the land sold; to take from the nation at large—the people, who had a right to the occupancy of the lands—the amount that was equivalent to this land, and to put it into the

hands of the rascally chiefs, not of the Creeks only, but of the Cherokees, who came here to prevent, as far as any misrepresentation could prevent, any measures by which the treaty of the Indian Springs should be confirmed. What will be said of the head of the Department, who spurned the bribery and corruption, yet, with a knowledge of this fraud, brings forward this treaty, and does not give us this information? Is there a Senator, who, with a full knowledge of the fraud which has been attempted, and which is to be consummated, would not prefer the treaty of the Indian Springs, not thus stained with fraud? The gentleman from Ohio says it is impossible that the Secretary of War should understand the powers given to these chiefs. He had their instructions in his bureau; General Gaines brought them to him. They were to cede all the lands to the east of the Chatahoochie, and with discretion to go as much farther as they thought proper. Their power was ample, and the Secretary knew at the time that they possessed that power: and, therefore, that their assertion to the contrary was false. The constitutional question as regards Georgia, yet remains in force, and though it may not seem to apply to Alabama, I still think our rights were violated in annulling that treaty and adopting another. I wish I could devise any mode of getting that last treaty back again before the Senate, that it might be rejected, because it would defeat a villainous fraud. It would bring about an examination of the original treaty, which was greatly advantageous to the State of Alabama. It would not have been thus advantageous to individuals, nor would it have been found tainted with fraud and corruption, as many gentlemen suppose. I have not had an opportunity of consulting with gentlemen in regard to the course which ought to be pursued where the ratification has not been made by the President, or I should have been induced to have placed a resolution on the table, asking the President to suspend the ratification of the treaty, if it has not yet been ratified. In that I fear I should fail. The distribution of the money is perfectly indifferent to me. It would, I think, be better it should be distributed through the medium of the agent; he is acquainted with the individuals in every town. If you distribute it through the medium of a special agent, in open council, there is and may be a way by which these fraudulent individuals may get possession of a portion of the money. I am disposed to deprive them of the whole. The agent, knowing the chiefs and the towns, would distribute it so that it should be divided among all the Creeks. The very circumstance of your taking the distribution from him has a suspicious appearance, as if he was not to be trusted. I know he has rendered himself odious to this people, in consequence of his arraying himself against this fraud. I shall vote for insisting on the amendment of the Senate.

The question was then taken on Mr. HOLMES'S

proposition to amend Mr. VAN BUREN's resolution, and was decided in the affirmative, ayes 19, noes 16; and then the question was taken on agreeing to the resolution as amended, and carried.

Mr. HARRISON then, partly from some circumstances which arose out of the preceding debate, and partly from the quantity of business yet to be acted on, and the little prospect there was, considering the length of the debates, to act on it all by to-morrow night, offered a resolution proposing to extend the session to Thursday next; which, after some discussion between Messrs. HARRISON, HAYNE, BERRIEN, BENTON, BRANCH, CHANDLER, MACON, KING, and ROWAN, was concurred in, by yeas and nays, as follows:

YEAS.—Messrs. Barton, Benton, Berrien, Bouligny, Branch, Chambers, Chase, Eaton, Findlay, Harrison, Hendricks, Johnston of Louisiana, King, Lloyd, Marks, Noble, Pickens, Reed, Robbins, Rugles, Sanford, Seymour, Smith, Thomas, Van Buren, Woodbury—26.

NAYS.—Messrs. Bell, Chandler, Dickerson, Edwards, Harper, Hayne, Holmes, Kane, Knight, Macon, Rowan, Tazewell, White, Williams—14.

SATURDAY, May 20.

*Vine and Olive Lands in Alabama.*

Mr. PICKENS submitted the following motion for consideration:

*Resolved*, That the Secretary of the Treasury be instructed to furnish to the Senate, at the next session of Congress, a copy of the contract made with the agent of the late emigrants from France, in pursuance of an act to set apart and dispose of certain public lands for the encouragement of the cultivation of the vine and olive; with a list of the names of the emigrants, and the allotments assigned them respectively; with a statement showing the allotments forfeited for nonperformance of the conditions in the contract: showing, also, the cases wherein the conditions have been performed, and the manner of such performance, by whom, and under what tenure or authority, (in the cases where others than the original allottees may be the occupants;) and that he, at the same time, communicate any other information in his possession affecting the titles derived under the act aforesaid, and the act supplemental thereto, with any circumstances which may furnish equitable grounds of relief from forfeiture, or otherwise.

Mr. CHANDLER asked for some information from the mover, in explanation of the objects of the resolution.

Mr. PICKENS said he supposed the resolution would be sufficiently explanatory of its object. He would, however, offer a few words. In the year 1817, after the last revolution in France, an application was made by a number of emigrants, who had abandoned their country to seek a home here for a place of refuge, where they might congregate together, and be employed in their original occupation of cultivating the vine. The Congress of the United States, with great liberality, passed an act with almost unexampled unanimity in their favor, and four townships of land were granted, and the Secre-

tary of the Treasury was directed to contract with the agent, or agents, employed by those emigrants, for the cultivation of such vegetable productions as might be proper. The Secretary of the Treasury, in consequence of the authority of that act, made contracts with the agents of the emigrants, requiring certain conditions for the cultivation of the vine and olive at certain periods. The last condition of cultivation and improvement, expired on the 8th of January last.

It was understood, Mr. P. said, that the Secretary of the Treasury had it in contemplation, in the next recess of Congress, to send an agent to ascertain how far the fulfilment of the contract had taken place; and the object of the resolution was, that, while that information was collecting, he might collect all other that might be satisfactory to communicate to Congress. Some of those persons might not have fulfilled the contract, but yet might have equitable grounds on which to be relieved from forfeiture. There were others against whom the forfeiture ought to be imposed; and, while this information was collecting, it would be an easy matter for the agent, by having his attention previously directed to it, to get ample information to report at the next session of Congress.

Mr. P. said he thought it was a duty he owed to the Senate to state, that, while there were many persons who were *bona fide* emigrants from France, there were many others who had, somehow or other, imposed themselves on the Treasury Department, who had never seen France, but who had emigrated from St. Domingo.

Mr. P. said he hoped that when this matter should be finally considered by Congress, that some degree of liberality would be shown. There were some who had *bona fide* settled down, and had endeavored to fulfil the contract; many of them were good citizens, even though they were not recent emigrants, and that this error would therefore be overlooked. These were the reasons why he wished all the circumstances to be collected by the next session of Congress.

Mr. KING said he did not wish to oppose the resolution offered by his colleague, but he would suggest that it was unnecessary, as all the information had been communicated to Congress at the last session. The Secretary of the Treasury, by a call from the Senate, communicated to Congress a list of all the persons who were entitled to land under the grant of the four townships in Alabama. The names were there, and the quantity of land granted to each. The only difference between that and the present resolution, was the attempt to distinguish between those who were actual emigrants from France and those who were not. That would probably be attended with considerable difficulty. Mr. K. said he had called the attention of the Secretary of the Treasury to the subject: he had addressed a note to him reminding him that the first period had passed, and that the second period, for

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the cultivation of the vine, had arrived, and it was necessary, if they had not complied with the stipulations, to inquire about the forfeiture. Mr. K. said he had informed the Secretary that there were many emigrants who had disposed of the property to individuals for a valuable consideration, and that it would probably become a matter for equitable consideration. The Secretary had assured him that an agent should be appointed to collect all the information relative to the cultivation of the vine and olive up to January last, where the transfer had been made, by whom made, at what time, and other information. Mr. K. said he made this statement to show his colleague that a portion of the information called for by his resolution, was already before the Senate, and that the residue would be attended to by the Secretary of the Treasury.

Mr. CHANDLER said he was satisfied that the resolution was proper, and would only bring to the mind of the Secretary of the Treasury what had formerly been stated to him by the gentleman from Alabama.

Mr. PICKENS said it was no doubt true, that part of the information might have been communicated, but if any thing more had been communicated, it must have been more than was within the power of the Secretary of the Treasury to communicate. His main object was to collect all the facts in relation to the fulfilment of the contract, with such other circumstances as might operate in favor of the occupants, or otherwise, not confining the investigation to those who were recent emigrants. The act of 1822, Mr. P. said, had individualized the contract, by which any one individual could obtain a title. In consequence of this, it would be necessary to point out the particular allotments, and that connected with the other information, would be more complete.

The resolution was then agreed to.

The bill for the relief of the Florida Indians was taken up, and considered, as in Committee of the Whole.

The question being on agreeing to the amendment proposed by the Senate, appropriating \$80,000 for removing the said Indians to the country west of the Missouri and Territory of Arkansas. After a brief explanation by Mr. BENTON, the amendment was concurred in, and the bill ordered to a third reading, and was subsequently passed.

Mr. CHAMBERS renewed the motion to take up the bill for the preservation and repair of the Cumberland road. The motion was negatived—ayes 15, noes 20.

The Senate proceeded to consider the amendment of the other House to the bill from the Senate "regulating process in the States admitted into the Union, since 1798."

A short discussion ensued between Messrs. HARRISON, KANE, ROWAN, and WHITE, in which the amendment was opposed as leaving Missouri, Mississippi, Indiana, Illinois, Alabama, and Tennessee, without any system of execution laws, in the Federal Courts.

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Mr. KANE moved to amend the amendment of the House, by adopting the provisions of the original bill, in the States which had not been provided for by the amendment.

The amendment prevailed.

And then, on motion of Mr. JOHNSTON, of Lou., the bill was laid on the table.

Mr. WOODBURY then (about 4 o'clock) moved that the Senate take a recess until 6 o'clock; which, having been agreed to—

The VICE PRESIDENT rose and stated that it was his intention now, having reached the last business day of the session, by withdrawing from the chair, to give to the Senate the usual opportunity of appointing a President pro tempore. Before retiring, however, he would take the occasion to return his thanks for the support and courtesy which the Chair had uniformly received, and to congratulate the Senate on the great degree of talent and patriotism that had been evinced in the body during this long and laborious session.

The Senate then adjourned to 6 o'clock, P. M.

*Evening Session—Election of President of the Senate pro tem.*

The Senate, at 6 o'clock, assembled, and soon after, on motion of Mr. NOBLE, proceeded to elect a President pro tem.

Mr. MACON having, on the 17th ballot, a majority of the whole number of votes, was declared duly elected President pro tempore, of the Senate, and was conducted to the chair by Mr. SMITH, when he delivered a short address, expressive of his thanks for the honor conferred on him, and the assurance that every exertion in his power would be used to despatch all the business as speedily as possible.

*Cumberland Road.*

Mr. HENDRICKS moved to take up for consideration the bill for the preservation and repair of the Cumberland road, and called for the yeas and nays on the question.

The motion was opposed by Messrs. BERRIEN, WOODBURY, and BENTON. It was supported by Messrs. HENDRICKS and HARRISON, who stated that, under the present circumstances, the friends of the bill would be content with that part of it which relates to the appropriation; (discarding the provision for toll gates.)

Mr. HENDRICKS withdrew his motion to take up the bill.

Mr. CHAMBERS then moved that the Senate re-consider their vote on the bill making appropriations for the public buildings in Washington, for the purpose of making an amendment to it, by adding a clause making an appropriation for the repair of the Cumberland Road.

Mr. BENTON said there were other bills which would come up in due course, to which the proposed amendment could be attached.

The motion to re-consider was decided in the negative—ayes 16, noes 17.

On motion of Mr. HARRISON, the Senate then



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Adjournment.

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took up the bill to authorize the surveying and making a road in the Territory of Arkansas.

Mr. CHAMBERS moved to add to this bill a section appropriating 45,000 dollars for the repair of the Cumberland road.

Mr. EATON moved to lay the bill on the table, as being calculated to involve important principles; and which would give rise to much discussion.

Mr. CHAMBERS withdrew his motion, and the bill was then laid on the table.

On motion of Mr. KING, the Senate insisted on their amendment to the bill for the relief of the Florida Indians, but the Senate subsequently receded from it.

On motion of Mr. NOBLE, the Committee on Pensions were discharged from the further consideration of the bill from the other House for the relief of invalid pensioners; stating, as a reason, that the bill had been kept back in the other House until so late a day, that there was not time for the committee to investigate the great number of cases embraced by the bill, and that it could not, therefore, be acted on at the present session, having been received only two or three days since.

On motion of Mr. EATON, the Senate proceeded to reconsider the vote on the bill making appropriations for the public buildings in Washington; and Mr. CHAMBERS then offered the amendment relative to the Cumberland road, which had been before offered and withdrawn.

Some discussion ensued, in which Messrs. EATON, CHAMBERS, CHANDLER, BERRIEN, EDWARDS, HAYNE, HARRISON, FINDLAY, and TAZEWELL, took part.

Mr. MARKS moved to amend the amendment by striking out \$45,000 and inserting \$30,000.

Mr. TAZEWELL inquired of the Chair whether the bill had not passed which the gentleman from Tennessee wished to reconsider? Was not the question which was now pending, whether the vote for passing the bill should be reconsidered or not? And he wished to know, after a bill had passed a third reading, and the question for reconsideration coming on, whether an amendment could be offered to a bill that had passed?

The Chair decided that the bill now stood as it did on its third reading, and an amendment could not be offered—it could only be got at by recommitment.

Mr. CHAMBERS then moved to recommit the bill to the Committee on the District of Columbia, with instructions to report an amendment of 30,000 dollars for the repair of the Cumberland road.

Mr. HAYNE moved to lay the bill on the table; stating that the public buildings must suffer the fate of the Cumberland road appropriation, if gentlemen would insist on tacking the one to the other; and the motion was decided in the negative, by yeas and nays, as follows:

YEAS.—Messrs. Berrien, Chandler, Harper, Hayne, Macon, Tazewell, White—7.

NAYS.—Messrs. Barton, Boulligny, Branch, Chambers, Chase, Dickerson, Eaton, Edwards, Findlay, Harrison, Hendricks, Holmes, Johnston of Louisiana, Kane, King, Lloyd, Marks, Noble, Robbins, Ruggles, Seymour, Smith, Thomas, Williams, Woodbury—25.

The question was then taken on the recommitment, and decided in the affirmative, by yeas and nays, as follows:

YEAS.—Messrs. Barton, Boulligny, Chambers, Eaton, Findlay, Harrison, Hendricks, Holmes, Johnston of Louisiana, Kane, Lloyd, Marks, Noble, Ruggles, Seymour, Smith, Thomas—17.

NAYS.—Messrs. Berrien, Branch, Chandler, Chase, Dickerson, Edwards, Harper, Hayne, King, Macon, Robbins, Tazewell, White, Woodbury—14.

The committee, in a short time, reported the bill, with the aforesaid amendment.

Mr. TAZEWELL inquired whether the bill, having been already once read this day, could be again read?

The Chair decided that the recommitment took the third reading off, and that every thing that regarded the passage of the bill went for nothing when it was recommitted.

The question was then put on considering the report of the committee, (proposing the Cumberland road appropriation,) and was decided in the affirmative—yeas 17.

The question then was on agreeing to the amendment of the bill, reported by the committee.

After some discussion between Messrs. TAZEWELL, SMITH, HOLMES, CHANDLER, CHAMBERS, NOBLE, BERRIEN, and HARRISON—

Mr. WOODBURY offered an amendment to the amendment, "providing that a sum equal in amount to the said appropriation remains unexpended of the two per cent. fund;" which was decided in the negative, by yeas and nays, as follows:

YEAS.—Messrs. Berrien, Branch, Chandler, Dickerson, Edwards, Harper, Hayne, King, Macon, Rowan, Tazewell, White, Woodbury—13.

NAYS.—Messrs. Boulligny, Chambers, Chase, Eaton, Findlay, Harrison, Hendricks, Holmes, Johnston of Louisiana, Kane, Lloyd, Marks, Noble, Ruggles, Seymour, Smith, Thomas—17.

The question was then taken on agreeing to the amendment reported by the committee, and was decided in the affirmative, by yeas and nays, 17 to 14.

And the bill was then ordered to a third reading, and subsequently passed, as amended, and sent to the House of Representatives for concurrence in the amendment.

And then, at 4 o'clock on Sunday morning, the Senate adjourned.

MONDAY, May 22.

Adjournment.

On motion of Mr. SMITH, it was ordered, that the Secretary inform the House of Representa-

MAY, 1896.]

*Adjournment.*

[SENATE]

tives that the Senate, having finished the Legislative business before them, are about to adjourn.

The Senate concurred in the joint resolution to wait on the President of the United States, with the information, that the two Houses, having concluded their Legislative business, were about to adjourn; and Messrs. SMITH and LLOYD were appointed the committee on the part of the Senate. Soon after,

Mr. SMITH reported, from the Joint Committee, that they had waited on the President of the United States, who informed them that he had no further communication to make.

The President of the Senate, pro tempore, made a short address, wishing the members of the Senate a safe return home, that they might find their families well, and that their days might be many.

And then the Senate adjourned.

## NINETEENTH CONGRESS.—FIRST SESSION.

## PROCEEDINGS AND DEBATES

III

## THE HOUSE OF REPRESENTATIVES.\*

MONDAY, December 5, 1825.

This being the day fixed for the meeting of the Nineteenth Congress, at its First Session, at 12 o'clock the roll of the House was called

## \*LIST OF MEMBERS OF THE HOUSE OF REPRESENTATIVES.

*Maine*.—John Anderson, Wm. Burleigh, Ebenezer Her-  
rick, David Kidder, Enoch Lincoln, Jeremiah O'Brien, Peleg  
Sprague.

*New Hampshire*.—Ishabod Bartlett, Titus Brown, Ne-  
hemiah Eastman, Jonathan Harvey, Joseph Healy, Thomas  
Whipple, Jr.

*Massachusetts*.—Samuel C. Allen, John Bailey, Francis  
Bayles, R. W. Crowninshield, John Davis, Henry W.  
Dwight, Edward Everett, Aaron Hobart, Samuel Lathrop,  
John Locke, John Reed, John Varnum, Daniel Webster.

*Rhode Island*.—Tristram Burges, Dutes J. Pearce.

*Connecticut*.—John Baldwin, Noyes Barber, Ralph J.  
Ingersoll, Orange Merwin, Eliasa Phelps, Gideon Tomlin-  
son.

*Vermont*.—Wm. C. Bradley, Rollin C. Mallary, John Mat-  
tocks, Ezra Meech, George E. Wales.

*New York*.—Parmenter Adams, Wm. G. Angel, Henry  
Ashley, Luther Badger, Churchill C. Cambreleng, William  
Deitz, Nicol Foedick, Daniel G. Garnsey, John Hallock, jun.,  
Abra. B. Hasbrouck, Moses Hayden, Michael Hoffman,  
Charles Humphrey, Jeromus Johnson, Charles Kellogg,  
William McManus, H. C. Martindale, Henry Markell, Dud-  
ley Marvin, John Miller, Timothy H. Porter, Henry H.  
Rosa, Robert S. Rose, Joshua Sands, Henry R. Storrs, James  
Strong, John W. Taylor, (Speaker), Egbert Ten Eyck, Ste-  
phen Van Rensselaer, Gullian C. Verplanck, Aaron Ward,  
Eliasa Whittemore, Bartow White, Silas Wood.

*New Jersey*.—George Cassidy, Lewis Condict, Daniel  
Garrison, George Holcombe, Samuel Swan, Ebenezer Tucker.

*Pennsylvania*.—William Addams, James Buchanan, Sam-  
uel Edwards, Patrick Farrelly, John Findlay, Robert Har-  
ris, Joseph Hemphill, Samuel D. Ingham, George Kremer,  
Joseph Lawrence, Samuel McKean, Philip S. Markley,  
Daniel H. Miller, Charles Miner, James S. Mitchell, John  
Mitchell, Robert Orr, George Plumer, Andrew Stewart,  
James S. Stevenson, Alexander Thompson, Epy Van  
Horne, James Wilson, Henry Wilson, George Wolfe, John  
Wurtz.

*Delaware*.—Louis McLane.

*Maryland*.—John Barney, Clement Dorsey, John Leeds

over by the Clerk, (MATTHEW ST. CLAIR  
CLARKE, Esq.,) and it appeared that there were  
present 304 members, besides three Delegates  
from Territories.

The House then proceeded to the election

Kerr, Joseph Kent, Peter Little, Robert N. Martin, George  
E. Mitchell, George Peter, Thomas C. Worthington.

*Virginia*.—Mark Alexander, William S. Archer, William  
Armstrong, John S. Barbour, Burwell Bassett, Nathaniel  
H. Claiborne, Thomas Davenport, Benjamin Estill, John  
Floyd, Robert S. Garnett, Joseph Johnson, William McCoy,  
Charles F. Mercer, Thomas Newton, Alfred H. Powell, Wil-  
liam C. Rives, William Smith, Andrew Stevenson, John  
Taliaferro, Robert Taylor, James Trezvant.—[One vacancy.]

*North Carolina*.—Willis Alston, John H. Bryan, Samuel  
P. Carson, Henry W. Conner, Weldon N. Edwards, Richard  
Hines, Gabriel Holmes, John Long, Archibald McNeill,  
Willie P. Mangum, Romulus M. Saunders, Lemuel Sawyer,  
Lewis Williams.

*South Carolina*.—John Carter, William Drayton, Joseph  
Gist, Andrew R. Govan, James Hamilton, George McDuffie,  
Thomas R. Mitchell, Starling Tucker, John Wilson.

*Georgia*.—George Cary, Alfred Cuthbert, John Forsyth,  
Charles E. Haynes, James Merriwether, Edward F. Tat-  
nell, Wiley Thompson.

*Kentucky*.—Richard A. Buckner, James Clarke, Robt. F.  
Henry, James Johnson, Francis Johnson, Joseph Lecompte,  
Robert P. Letcher, Thomas Metcalf, Thomas P. Moore, Da-  
vid Trimble, Charles A. Wickliffe, Wm. S. Young.

*Tennessee*.—Adam B. Alexander, Robert Allen, John  
Blair, John Cocke, Samuel Houston, Jacob C. Isaacks, John  
H. Marable, James C. Mitchell, James K. Polk.

*Ohio*.—Mordcael Bartley, Philemon Beecher, John W.  
Campbell, James Findlay, David Jennings, William McLean,  
John Sloane, John Thompson, Joseph Vance, Samuel F.  
Vinton, Eliasa Whittlesey, Wm. Wilson, John Woods, John  
C. Wright.

*Louisiana*.—Wm. L. Brent, Henry W. Gurley, Edward  
Livingston.

*Mississippi*.—Christopher Rankin.

*Indiana*.—Ratiff Boon, Jonathan Jennings, John Test.

*Illinois*.—Daniel P. Cook.

*Alabama*.—John McKee, Gabriel Moore, George W. Owen.

*Missouri*.—John Scott.

## DELEGATES.

*Michigan Territory*.—Austin E. Wing.

*Arkansas Territory*.—Henry W. Conway.

*Florida Territory*.—Joseph M. White.

DECEMBER, 1825.]

*Unclaimed Dividends on United States Stock.*

[H. OF R.]

of a Speaker; and, on the first balloting, there were,

For JOHN W. TAYLOR, of New York,	89 votes
JOHN W. CAMPBELL, of Ohio,	41 "
LOUIS McLANE, of Delaware,	36 "
ANDREW STEVENSON, of Virginia,	17 "
LEWIS CONDIOT, of New Jersey,	6 "
Scattering,	5 "

Neither of the candidates having received the requisite number of votes to constitute an election, a second ballot was taken; when the votes stood as follows:

JOHN W. TAYLOR,	99 votes
JOHN W. CAMPBELL,	42 "
LOUIS McLANE,	44 "
ANDREW STEVENSON,	5 "
Scattering,	8 "

JOHN W. TAYLOR, having the constitutional number of votes, was accordingly announced to have been elected Speaker of the House, and was conducted by Mr. NEWTON (the Father of the House) to the chair, whence he delivered the following address:

"GENTLEMEN: When I see around me so many Representatives whose virtues and talents adorn our country—whose services, at home and abroad, in the cabinet and in the field, in Halls of Legislation and Judicial tribunals, have largely contributed to our national prosperity—I am penetrated with gratitude for the favorable opinion which has recalled me to this distinguished station. My brief experience has served rather to assure me that its duties are arduous, than to create confidence in my ability to discharge them to your satisfaction. Every effort, however, of which I am capable, shall be faithfully directed to merit your support.

"In the complex questions frequently presented to the Chair for prompt decision, unerring accuracy is scarcely attainable. When mistakes occur, my best endeavors shall not be wanting to correct them, and to repair whatever injury they may have occasioned.

"With an anxious desire that your countenance and advice will not be withheld, and that the just expectations of your constituents may be fulfilled, in our legislative labors, I enter upon the duties of this important trust."

The members having respectively taken the oath of office,

On motion of Mr. LATHROP, MATTHEW ST. CLAIR CLARKE, Esq., former Clerk of the House, was appointed Clerk for the present Congress; JOHN OSWALD DUNN, Sergeant-at-Arms; BENJAMIN BURCH, Doorkeeper; and OVERTON CARR, Assistant Doorkeeper.

These officers having been sworn,

The usual resolutions were adopted, continuing the Rules of Order adopted by the last Congress; appointing 12 o'clock as the stated hour of meeting, and directing the Clerk to furnish the members with newspapers.

A message was received from the Senate, that they were assembled, and ready to proceed to business; when,

Messrs. TRIMBLE and LATHROP were appointed a Committee of the House, to join such committee as should be appointed for that par-

pose by the Senate, to wait upon the President of the United States, and inform him that a quorum of the two Houses were met, and ready to receive any communication he might have to make.

A farther message was received from the Senate, that they had appointed a similar committee, consisting of Messrs. SMITH and LLOYD, of Massachusetts.

And then the House adjourned.

TUESDAY, December 6.

Mr. TRIMBLE, from the joint committee appointed to wait on the President of the United States, reported that the committee had performed the duty assigned them, and that the President had replied that, at 12 o'clock this day, he would send to each House a message in writing.

At twenty minutes past 12, the Message (which will be found in the Senate Debate) was brought in by the President's Secretary, (Mr. JOHN ADAMS, jr.), and read at the Clerk's table. The reading occupied one hour. The message was accompanied by reports to the President from the Secretary of War, the Secretary of the Navy, and the Postmaster General, with other documents.

The Message and reports were referred to the Committee of the whole House on the state of the Union. Six thousand copies of the Message, and six hundred copies of the reports, &c., were ordered to be printed.

THURSDAY, December 15.

*Unclaimed Dividends on United States Stock.*

The following resolution, yesterday offered by Mr. LIVINGSTON, was taken up:

"Resolved, That the Secretary of the Treasury be directed to lay before this House a detailed account, containing the names of the several persons to whom the unclaimed dividends of the funded debt of the United States appear to be due; the amount due to each; the species of stock on which they have grown due; and the period since which the dividend has not been claimed. And that he also give a like detailed account of all such dividends as, having been unclaimed for three years or more, have afterwards been paid to any one appearing to represent the stockholder, or his representative, as attorney in fact; together with the name and residence of such attorney."

Mr. LIVINGSTON, on introducing the above resolution, observed that he had done so in consequence of a report made by the Secretary of the Treasury in answer to a call by this House, which directed him to state the gross amount only of the dividends referred to in the resolution. The report of that officer was in strict accordance with the terms of the call. It gave the gross amount only, and from that report, it appeared that the Treasurer of the United States had in his hands \$226,845 89 of moneys, belonging to individuals, but which remained

unclaimed by those to whose credit it stood upon the books; and the simple question was, whether the Government will give to these individuals the knowledge of this fact, in order that they may ask for that which is their due. When, at the last session of Congress, he had presented this subject for consideration, he had done so in the unsuspecting assurance that it would meet with no opposition from any quarter. He had not conceived that opposition was possible. He had presumed that the first rules of probity, which govern nations, as they govern individuals, would, as a matter of course, induce the United States to tell the persons in whose name these sums stood, that their money was ready for them. To his infinite surprise he had since heard such objections as he never could have anticipated. It was most clear that the persons referred to must be ignorant of the rights which they possessed. This was evident from the fact that large sums had been suffered to lie useless and unemployed, some of them for very many years. And it appeared to him quite as clear that they ought to be apprised of their rights. This was the object of the resolution. His desire was, that, so soon as this report shall be received, it shall immediately be made public, for the benefit of all concerned, that every man may apply for, and receive, his due. Let it be remembered by the House that the amounts thus to be published were not amounts of doubtful or unliquidated claims, but the amount of acknowledged and ascertained rights, and that the only effect to the Government would be, that it would cause it to restore property which it could not, with probity, retain. Yet, strange as it might appear, some gentlemen had urged objections to a measure thus palpably equitable. What were they? It had, in the first place, been urged, that, as these sums were unknown to the owners there was no necessity of publishing them. That they were unknown to the owners is undoubtedly true. They must have been unknown or they would have been demanded. But, it was said, if we publish to the world these names and sums, others besides the true owner will get the intelligence, powers of attorney will immediately be forged, the moneys will be drawn by those who have no right to them, and a general scene of fraud and speculation will infallibly ensue. This, perhaps, to a certain extent, might happen; but, which was worse—that the Government should keep money which does not belong to it, or that it should give the rightful owners at least a chance of receiving what was their own? Fraud! On whom? On those who do not know their rights—are not demanding them—and, in the present state of things, will never obtain them. Such persons surely cannot be defrauded; for they cannot be more injured than they are, by keeping their money forever in the Treasury. They do not get it as it is, and they could but lose it in any case. No, sir, the fraud is, that we should be obliged

to pay money which is not ours, and which we wish to keep. That is the fraud. But this danger of fraud, of which gentlemen speak, if it exist at all has been greatly magnified, and, instead of being prevented, is greatly favored and increased by the present state of things. The existence of such an amount of unclaimed dividends cannot be an entire secret—that is impossible in the nature of things. The knowledge of it will exist somewhere; somebody will know what these amounts are, and to whose credit they stand. But where is this knowledge now? In the Branch Bank of this city. The president and cashier of that bank know it; all their clerks know it; and through the indiscretion or carelessness of these clerks a few of their friends probably know it. Now, sir, is fraud likely to be prevented by keeping that a secret among some ten or twenty persons, which ought to be known to all the world? If any powers of attorney are likely to be forged, are they not most likely to be so when the secret remains in a few hands? And is there, or can there be any better mode of preventing such frauds than by laying the whole case open to the knowledge of the whole community?

Mr. WICKLIFFE observed, that he recollected the gentleman's having, at the last session, offered a resolution similar to this, but that, after some discussion, the House refused to adopt it. He had now listened with interest to the arguments the gentleman had urged in support of it, and which were certainly entitled to consideration. He believed, however, that more mischief was likely to arise from the publication of this list of balances, than the gentleman was aware of. The amount of them struck him as very extraordinary to have been suffered to remain thus long uncalled for. He rose, however, not directly to oppose the resolution of the gentleman from Louisiana, but merely to ask that it be permitted to lie on the table for a few days. He felt very sure that the publication would cause a vast scene of speculation through the country, by persons buying up the rights of unconscious owners; and before the House consented to the call, he was desirous that further time be allowed for reflection upon it. He then moved that it lie on the table; but withdrew the motion to give an opportunity for reply.

The question being put on this motion it was carried, and the resolution of Mr. LIVINGSTON was accordingly laid upon the table.

#### *Western Armory.*

On motion of Mr. BLAIR, the House went into Committee of the Whole, Mr. LATHROP in the chair, and took up the joint resolution offered some days since, by Mr. BLAIR, in the following words:

*"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be authorized and required to procure the officers of the Engineer Department, who are now engaged in*

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*Western Armory.*

[H. OF R.]

examining the route for a National Road from the city of Washington to New Orleans, to examine that part of the western waters which lie within East Tennessee, with a view to the selection of a site for an Armory on the western waters; and that report thereof be made to Congress during the present session."

Mr. BLAIR said that he had not intended to have said any thing in commendation of this measure; that the resolution on its face so clearly developed the reasonableness of the proposition, that he did not anticipate any objection to its adoption; but, from a disposition being manifested by some members of the committee to receive an explanation, he took pleasure in affording any information which he might be able to impart. This resolution does not ask for an appropriation of money to fulfil its object, nor does it contemplate the least delay in the erection of the armory to which it has reference; its sole object is to obtain for a component part of the western waters, an equal participation in respectful examination with others which had been examined. It will be recollected that the act of 1821 authorized the survey of the western waters, with a view to the selection of a site for a national armory. That act has not been carried into effect so far as relates to the section of country embraced in the resolution; notwithstanding a report has been made to Congress at its last session, designating the vicinity of Pittsburg as the most eligible site. Mr. B. said he did not pretend to a perfect knowledge of the whole western waters, so as either to applaud or censure the report alluded to; nor was he so conversant with such establishments as to speak with certainty as to what should be the primary inducements in their location. But, Mr. B. said, he did not hazard much when he said, that neither the examining board, nor the committee, were prepared to draw a just comparison between the site which was the object of preference, and one of the many within the scope of country embraced in the resolution. Mr. B. said that he did not wish to be understood as complaining of the selection, so far as the preparatory examinations had been made, although it might with propriety be inquired, whether Pittsburg was within the spirit of the law, when its contiguity to the Harper's Ferry establishment, compared with other parts of the western waters, was taken into consideration; but that the great ground of complaint arose from the total disrespect which had been paid to a section of country about 250 miles in length, and embracing the whole width of the State—a section of country abounding with waterfalls, fuel, and iron ore, to a greater extent than almost any other; as an evidence of which, he would mention that, in the smallest county in Tennessee, there were at that time not less than sixteen iron establishments in successful operation; that in addition to other advantages, East Tennessee was pre-eminently blessed with climate, and the means of living.

But, Mr. B. said, why should he speak of the advantages which were presented to view from the section of country under consideration, when the sole object of the resolution was, the ascertainment of that fact. Had a contemporaneous examination of our claims have been made, with others, and the preference been withheld from us, he could assure the committee that the language of complaint would not have been heard; but what else than just complaint could have been expected from a people ever jealous of their rights? This complaint I now feel it my duty, as one of their representatives, to make, and, on their behalf, to call upon the proper authorities for redress. He was gratified to see that no other section of the western waters could be prejudiced, in extending this act of justice to East Tennessee, as no delay was asked for, nor was it intended that the object of the resolution could be fulfilled by those officers of the Board of Engineers, who were now engaged in examining the country between this city and New Orleans, with a view to the location of the contemplated national road. This opportunity being now afforded, he could not indulge the idea that a member of this committee would be disinclined to afford the general satisfaction which would result, should no higher object be attained. He would further add, that this early application had been made with a view to enable the President to forward the necessary instructions to those officers who were now in the West, so as to meet them on their return route, which would lead through the vicinity of the most prominent objects of inquiry. He hoped the resolution would be adopted without delay, as it must now be attended with despatch, or the object could not be accomplished.

Mr. STEVENSON, of Penn., observed that it was with great reluctance he rose to address the Committee of the Whole, consisting as it did of some of the most distinguished men of the country; but he felt impelled to say a few words upon the subject, with a view to bring fairly before the recollection of the committee, what had taken place on this subject. By the act of the 8d of March, 1823, the President of the United States was directed to appoint commissioners to make a survey of the western waters, with a view of fixing upon the most eligible site for an Armory. These commissioners were accordingly appointed, and it would be seen, from their letter of instruction, dated the 26th of April, 1825, that the widest range was given them. [Here Mr. S. read a part of the letter of instructions.] Here then, (continued Mr. S.,) was a wide range indeed, embracing the whole western country, the whole of the Ohio and Mississippi Rivers, and their tributary waters. To execute this survey, three distinguished men were appointed, viz: Colonel McKee, Colonel Lee, Superintendent of the U. States Armory at Springfield, and Major Talcott, of the Ordnance—men selected with care, who could have no previous commitment, and who were familiar

with the nature of the subject referred to them. From such men, said Mr. S., a fair report might be expected—such a one as would enable the faithful Representatives of the people to make a location which would be beneficial to the whole nation, and not to any particular State or section of country. [Here Mr. S. quoted part of the report as published at the last session of Congress.] Now, sir, said he, here were three gentlemen, selected by the President of the United States, whose competency cannot be questioned, and who devoted ample time, and what some supposed more than sufficient, twenty-one months having been devoted to the work; who examined the whole western country, from Alabama to the western bounds of Pennsylvania, through Ohio and Tennessee, as would be seen by reference to the report. Shall we rest the interest of this nation, in this matter, upon the report made by these gentlemen, said Mr. S., or shall we still wait, and compare their report with that of two or three young men, who, though promising, are still but young? Can the report of these young gentlemen be depended upon, in preference to that obtained from such commissioners as have already reported? If the object of the gentleman is to obtain *another* Armory, beside that already determined on, let him avow it. But, then, it cannot be said, we ought to wait until this examination is made, before we act upon the report which has been already made. I have made these few remarks, (said Mr. S.,) with reference to what has been done, because I know that there are several new members, who are unacquainted with it, and who, perhaps, do not even know that a report has been made upon the subject.

Mr. MARABLE observed, that it was not necessary to go into the details of this subject, or state the claims of the State he had the honor in part to represent, to a preference for this object; but when he heard a proposal to have the State examined, and yet to omit the whole of the lower portion of it, he must be expected to feel sensitive. He therefore should take the liberty of offering an amendment, which went to include that part of Tennessee which the gentleman had omitted—(and which he reduced to writing.)

Mr. COOKE, of Tenn., said, that he had an objection to the amendment. Has not, asked Mr. C., the district included in the amendment been examined already? Surely it has—and after examining it, the commissioners determined that it was not a suitable place for the location of an Armory. Yet the gentleman now wishes another examination—hoping, as it would seem, that, by some turn of the die, he may succeed in accomplishing his object; but had East Tennessee been examined as West Tennessee has been, and then rejected, not an objection should be heard from his lips on the subject. His object was, not to delay the decision, but only to have it made on fair grounds. Those who reside in West Tennessee have had their country examined by the most experienced engineers—while we, who reside in East Tennessee, must be con-

tent with the examination of those whom the gentleman from Pennsylvania tells us are but young men. This, to be sure, is a great disadvantage; but we must submit to it. We still wish our country examined, and its claims fairly considered. If the amendment prevails, all the western country will immediately claim to be reexamined, since it all has as great a right as West Tennessee.

Mr. HAMILTON (Chairman of the Committee on Military Affairs) then said that, as the subject had been referred to the Committee on Military Affairs, it might be expected that he should offer a brief view of the subject. The question now before the committee, he apprehended to be, not where the Armory should be located, but whether this is the best mode of ascertaining where it is to be located. Now, on the very threshold of the subject, there appeared to him to be something incongruous and incompatible, in assigning to this examination a corps of engineers already employed on the survey of a national road. They have already a task assigned them by Government, and in the midst of it, we superadd this difficult and delicate duty. But for such an object a special commission is requisite. The very argument of the honorable mover of the resolution, from the fact that this section of the country was not considered together with the rest, will certainly bear with double force, if the Board are employed to examine one specific portion of country only; they can form no comparison, and therefore can express no opinion; they may probably report that there is abundance of ore and of fuel, with some other advantages; but this establishes nothing as to the comparative merit of this spot and others. If this section of country has been omitted, it has probably happened because its general situation was known to the commissioners, and they thought there were conclusive objections against its coming in for any competition. He thought it would be highly inconvenient to give the corps a special commission for this examination, when they were already occupied by another and a greater object. Why would it not be best to make the examination and receive the report when Pittsburg and the other sites shall have been examined also? He should vote for the rising of the committee.

Mr. STEWART now renewed the motion that the committee rise, report progress, and ask leave to sit again.

The committee then rose and reported, but, before it was decided whether they should have leave to sit again.

The House adjourned.

FRIDAY, December 16.

*Exploration of the Northwest Coast.*

The following resolution, yesterday offered by Mr. BAYLIER, was taken up:

"Resolved, That the Secretary of the Navy be requested to inform this House whether the sloop of war Boston, about to be commissioned, might not

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be employed in exploring the Northwest coast of America, its rivers and inlets, between the parallels of latitude 42 and 49 North, without detriment to the naval service of the United States; and whether the expense incurred in such service would exceed the ordinary expenses of such vessel while cruising. And, also, whether it would be practicable to transmit more cannon and more of the munitions of war in such vessel, than would be necessary for the use of the vessel."

Mr. SAWYER offered the following as an amendment, to be added to this resolve:

"And thence to proceed into Behring's Straits, and, if practicable, to continue her route into the Polar Seas, and through the openings of Prince Regent's Inlet, or Barrow's Strait, into Davis' or Hudson's Straits, thence, down said Straits, to some port in the United States."

Mr. SAWYER said, that this amendment was predicated upon that part of the President's Message which relates to our contribution of mind, of labor, and expense, to the acquisition of knowledge, and has reference to those numerous voyages for the discovery of a Northwest passage to China, which have been fitted out of late years, particularly by England. In 1818, a ship was sent, under the direction of Captain Ross, who, for the first time, made the circuit of Baffin's Bay, and penetrated to 77 degrees North, which is two degrees beyond the place called Red Head, the highest point reached by the whalers. He not only enlarged the sphere of geographical science, so much as to render our maps of this section of the continent useless, and added many important facts and subjects to natural history, but led his adventurous countrymen through fields and mountains of ice, to new harbors of the whale, where full cargoes of oil are obtained in the shortest time. He invented the deep-sea clam, a machine which brings up large portions of soil from a depth of seven hundred fathoms. He was succeeded, in 1819, by Captain Parry, the fearless champion of science, who, in three successive voyages, has discovered no less than three different passages into the Polar Seas, and thence, through Behring's Straits, to the Pacific. In his first voyage, he discovered the opening which he named after his ships, the *Fury* and *Hecla*. In his second and third, he found those which he called Prince Regent's Inlet, and Barrow's Strait. It is but two months since he returned from his third voyage, which failed from the loss of one of his ships that was wrecked by a floe of ice, while passing through Barrow's Strait, with every appearance of success. In his second voyage, Captain Parry obtained the bounty of \$10,000, granted by Parliament to the navigator who should reach the 110th degree of West longitude. He also passed directly over the magnetic pole, in latitude about 74, and longitude 100 West, immediately after which his compasses, which before varied 128 degrees, 58 minutes, West, changed to 165 50 East, or, in

other words, pointed nearly South. Captain Parry has enriched physical science by many valuable additions. Contemporaneous with these voyages, was a land expedition under Captain John Franklin, along the united British Fur Company's posts, down the Coppermine River, to the Polar Sea. He arrived in the Arctic Sea in August, 1820, and navigated it for several hundred miles in canoes, towards the northeast. He discovered a group of islands, which he named King George the Fourth's Archipelago. He is now performing another expedition in that direction, and contemplated meeting Captain Parry at some given latitude on the Polar Sea. In about latitude 64 degrees North, he passed the zenith of the *Aurora Borealis*, which, as he proceeded, appeared afterwards in the southern portion of the heavens. He endeavored to ascertain whether this electric fluid emits any noise, as is alleged by the Indians and factors, but that remarkable quality remains to be proved. He made many observations on the intensity of magnetic force in different latitudes, from the oscillations of the needle, and on Meteorology, settled the latitude and longitude of all the remarkable places, immortalized his friends by giving their names to them, and brought home immense spoils from the Zoological, Botanical, and Mineralogical kingdoms. The enterprising King of Great Britain certainly deserves much praise for the lead he has taken, in conjunction with Russia and France, and the perseverance with which he has pursued those disinterested, hazardous, and expensive expeditions, for the common benefit. The time has come when this nation should likewise enter into this glorious career of discovery and human improvement. Are we forever to remain idle spectators of these splendid exertions to trace our own continent? Will none but kings enlist in the cause of science? I had as lief borrow their money without any intention of repaying it, as to borrow their knowledge, which they have been at such great pains to obtain. We ought to feel more pride and independence; we ought to feel that unhappiness which Alexander felt upon learning the conquests of his father Philip, for fear he would leave him nothing to conquer. These views of policy, however, being new to us, I cannot flatter myself that they will be met by a majority of this House, and I shall content myself by proving, that I am willing to go as far, if not farther, than the avowed friends of the President, in this part of his recommendation. Can it be pretended that a mere maritime reconnoissance of seven degrees of latitude, will be received as a discharge on our part of this debt to science, which the President justly pronounces sacred? The ship, according to this resolution, is to cruise between our acknowledged limits, which, from the Spanish boundary of 42 degrees, to the British of 49 degrees of North latitude, includes a space of only 420 miles. It is with a view of making a tender, on the



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part of my constituents, of their part of this debt, that I have offered this amendment.

Mr. BAYLIS observed, in reply, that if he could have had any apprehension that the simple resolution which he had offered yesterday, would have elicited such a history as had just been given by the gentleman from North Carolina, he certainly should not have offered it. But the President having, in his Message to Congress, recommended a survey of the North-west Coast, it occurred to him that perhaps that object could be effected without an additional expense to the nation, by employing on that duty one of the sloops of war which were already in commission. He wished merely for an inquiry, whether one of those vessels might not be employed for this object, without detriment to other parts of the public service. But, if the amendment now offered was to be appended to the resolution, he hoped that his own motion, thus clogged, would not be adopted.

Mr. WHIPPLE observed, that one great objection to the amendment, arose from its proposing means which were so inadequate to the object which the mover had in view. When the British nation resolved upon the exploring expedition, of which the gentleman from North Carolina had favored the House with such an elaborate account, they had commissioned two ships for the purpose. But the amendment proposes to send into those seas of ice and danger, a single sloop of war. Such a measure would be perfectly futile, and totally inadequate to the object proposed.

Mr. SAWYER replied, that if this voyage proposed by the gentleman from Massachusetts, was to be confined to our own coast on the northwest, which, from the Spanish boundary of 42 degrees, to the British, of 49 degrees North, included a space of only 420 miles, the conclusion which would be drawn from the premises laid down by the President, must be a most lame and impotent one. Such a discharge of this debt to science, which he admits we owe, would, in that case, be a very poor one. 'Tis true, the President does not conclude by recommending, in express terms, a voyage of circumnavigation; neither do I propose it, except as regards our own quarter of the globe. The hint he has given, however, is sufficient for the wise. As to the increased expenses which the continuation of the voyage would require, it would be too trifling to enter into the calculation with such an enlightened body as this, when weighed with the great importance of the object to be gained—the elevation of the national character in the estimation of the friends of science at home and abroad. The whole additional expense would be the mere provisioning her for two years. The same complement of men would answer as would be required to equip her in the first instance. He, however, did not possess any very sanguine anticipations of the success of his amendment; he did not feel very tenacious of it, inasmuch as he would show that he was

willing to go as far as any personal friend of the President, in entering into the spirit of his message on that head.

The question being put on the amendment moved by Mr. SAWYER, it was rejected.

The question was then put on the original proposition of Mr. BAYLIS, and carried.

#### Case of Commodore Porter.

On motion of Mr. BUCHANAN, the House took up (not without a number of negative voices) the resolution offered by him the day before yesterday, calling for the Proceedings of the Court Martial and the Court of Inquiry, recently held upon Commodore David Porter.

Mr. BUCHANAN said, that when he had the honor of submitting this resolution, he had supposed that it would pass, as a matter of course, and not a word be necessary to be said upon the subject. So firmly was he of that opinion, that he thought it needless to trespass on the attention of the House, to show any reasons for its passage. The unwillingness which had been shown to act upon it, made it his duty now to submit a few observations in reference to it; having done which, he should submit it to the pleasure of the House.

What, asked Mr. B., is the purport of this resolution? It proposes a call on the Secretary of the Navy, for a copy of the Proceedings of the late Court Martial and Court of Inquiry in the case of Commodore Porter. Is this, said he, a novel request? No; it is of a nature of others which have repeatedly met the approbation of this House. Within my own distinct recollection, three cases of this kind occurred during the last session of Congress, in which the calls were granted as matter of course, viz: in the case of Major Babcock, that of Lieutenant Weaver, and that of Lieutenant Conner. And, sir, *ought they not* to have been granted? The question is not now upon the printing of these documents—though, if it were, he believed he could satisfy the House of the propriety of their being printed, and that an objection to calling for information, because of the contingency, that it might, when obtained, be ordered to be printed, was an argument entitled to no weight at all—the question is, how are we, who want it, to obtain this information, but by availing ourselves of the authority of this House to obtain it? As to applying personally at the Department for it, Mr. B. said, an individual member of this House had no more right to require information from any of the Departments, than any other individual. Was it proper, he asked, that members of this House should go, one after the other, to the Departments, and ask, each for himself, to see papers, and obtain information which concerns the welfare of the whole? Certainly not. The practice, therefore, has been, and he trusted would continue to be, when a member of this House, representing, as each member does, an important portion of this community, calls for a public paper, he shall have it by a vote of

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this House. It had been suggested yesterday, and with great deference he must say the suggestion was wholly out of order, that these papers had been called for by the Senate, and that, therefore, it was not necessary to call for them here. But, said he, is there any other mode in which the information could be properly in possession of this House, than by calling for it ourselves? Is the head of a department responsible to *us* if he do not send to the Senate *all* the documents in any case? Far be it from me to say, that the respectable head of that department would in any case withhold documents proper to be communicated—I have no such opinion of him; but, as an argument, this supposition may serve to show that this House ought itself to call for whatever papers it has occasion for.

It had also been suggested, that this House ought not to call for any documents on any department of the Government, unless the member moving the call will avow that he has a specific object in doing it. Now, Mr. B. said, it was obvious that a member must see and know the contents of a document before he can judge whether or not it be proper to found any measure upon them. In the present case, Mr. B. said, he did not meditate any ulterior proceeding. He had called for these documents, and he had expected that they would have been granted as a matter of course, for the purpose of examining them critically for himself, and whether any ulterior proceeding was to be moved, or not, would depend on the aspect of the documents after they were submitted.

What, then, said Mr. B., is the nature of the question presented by this resolution? There is a gallant officer of our navy, who has been tried by a court-martial, and convicted—whether correctly or not, I do not wish to express an opinion; I cannot, until I see the documents, to enable me to form one. It is an unquestionable fact, that, in regard to that trial and its result, the country is divided in sentiment. The friends of this officer—an officer who has shed lustre on the character of our navy; whose fame is such that our sister Republics vie with one another in offering him inducements to engage in their service—the friends of this officer come forward, and ask that the proceedings of the courts in his case should be laid before the Representative tribunal. Is this an unreasonable request? Is it an argument against complying with such a request, that our *impoverished* and *embarrassed* Treasury may be called upon to defray the expense of printing these papers when received? There is, in this country, a tribunal higher than this—which reviews the proceeding of every other, and judges both the accuser and the accused according to their desert—the tribunal of PUBLIC OPINION. Is nothing due to that tribunal? Is it not due to the people that these papers should be laid before them? That, said Mr. B., is all that I ask; and if any one supposes that I had any view, in offering

this resolution, but to obtain correct information for myself and others who desire it, they are entirely mistaken. And, Mr. B. said, if he understood rightly, the expense of printing the papers, when received, need not be incurred in this case: for, so proper had the Secretary of the Navy considered it that the proceedings of the Court Martial should be made public, he had already caused them to be printed, and held in readiness to be laid before Congress, if called for.

It had been suggested, yesterday, that this call for papers ought to have been addressed to the President of the United States, with a reservation to that officer of a discretion as to the propriety of communicating the papers called for.

Mr. B. said, on referring to the journal of the last session, he found that, in the case of Major Babcock, the Secretary of War had been called upon to communicate the proceedings of the court; so that there was nothing unusual in the form of the proceeding now proposed. Nor could he believe that there were any documents connected with the trial in the case of Commodore Porter, that it would be improper to communicate to Congress. If the respectable gentleman from Massachusetts thought otherwise, however, he could move an amendment to that effect. Mr. B. concluded by remarking, that he would rather that this resolution should have passed without a word from him in relation to it, and he now submitted it entirely to the pleasure of the House.

The question was then taken on the passage of the resolution, and was decided, without a division, in the affirmative.

TUESDAY, December 20.

*Desertion in the Army.*

An engrossed bill "making alterations in the present mode of paying the enlisted soldiers of the United States," was read a third time.

Mr. HAMILTON said that he should not, at this late hour, fatigue the House by entering into a discussion on the provisions of the bill under consideration, without, indeed, some gentleman present should state any objections to its passage; as it involved a measure not only advantageous to the service, but (as the Committee on Military Affairs thought) ultimately beneficial to the soldier himself.

Mr. MITCHELL, of Tennessee, observed, that the bill involved very important principles, and appeared to be calculated to inflict very serious injury upon the soldier and his dependent family. The object it proposed was to prevent desertion—but he did not think it at all calculated to obtain this end. When a man had once determined to forsake his post and desert the standard of his country, it was not one or two dollars consideration which would be likely to detain him. If any measure of this character must be resorted to, he thought it would be better to enhance the present allowance of the soldier by adding two dollars a month, and

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retain that addition till the expiration of the time of his enlistment. This might have some little effect; but, to deduct two dollars from his present monthly allowance, was to cut off his only means of supporting his little family. The misery of a wife and children thus rendered destitute, would have more influence in producing desertion than almost any other motive which could be brought to bear upon a man. There might too be a lover in the neighborhood, and such considerations, everybody knew, were calculated to exert a strong influence on the uninformed minds of our soldiery. He thought it would be better, instead of passing this bill, to lay it on the table until some better means could be devised for accomplishing the object proposed. Gentlemen should not forget that those who are now enlisted in the public service will not be there forever, and they ought to take care lest, whilst devising means for retaining those whom we have got, they throw obstacles in the way of obtaining others when these are gone. By depriving the soldier of the command of his own purse, a very serious discouragement will be presented to enlistment. But, as to preventing desertion, if no considerations of honor, or even of life, had been found sufficient to prevent it, he felt confident that no two dollar considerations would have greater power.

Mr. TRIMBLE said, that he had risen for the purpose of making an inquiry of the Chairman of the Military Committee, (Mr. HAMILTON,) and if the answer to it was such as he expected it would be, he did not see how the House could refuse to pass the bill. By a report submitted a few years since from the Department of War, the House were informed that the number of desertions amounted, if he recollected rightly, to about one-fourth of the entire number of enlistments, and the then Secretary had recommended this measure, for the best possible reasons. He remembered that he had then felt satisfied that such a bill ought to pass, and, if the same fact still existed, he should still retain the same opinion.

Mr. HAMILTON, in reply to Mr. TRIMBLE, said that he had the best authority for believing, that the evil had rather increased than diminished.

Mr. BUCHANAN said, that, in his opinion, much weight should be attached to the remarks of the gentleman from Tennessee, (Mr. MITCHELL.) If death, and the other severe penalties already denounced by your laws against the crime of desertion, were not sufficient to deter the soldiers from committing it, would the distant prospect of receiving the two dollars per month at the end of their term of service, be productive of this desirable result? He thought it very doubtful, particularly as the new recruits under this system would generally be taken from the dregs of society.

Mr. B. observed, that the House had no correct information before them, as to the number of desertions during the last year. He thought this information should be obtained. It was

not known whether that crime had increased or diminished. Besides, the measure was one of importance, on which the House should not act hastily. He therefore moved to lay the bill on the table.

The motion was carried by a large majority.

FRIDAY, December 23.

*Treaty of Fort Jackson.*

The resolution yesterday offered by Mr. OWEN, calling for the correspondence of the War Department with Generals Pinckney and Jackson, in relation to a treaty with the Creek Indians at Fort Jackson, was taken up.

Mr. OWEN said, that the resolution which is now under the consideration of the House, is designed by its mover to be used only in the investigation of the rights of certain individuals. He has no other object in presenting it. I am led to believe, that the design of the Government, in asking of the Indian nations to surrender the right of possession (upon the principle that no other right existed in our tribes of Indians—which principle I believe to be a correct one) to the lands obtained by the treaty of Fort Jackson, was to secure to the Government indemnity for the expenditures made in consequence of the infraction of previously existing treaties, by that nation of Indians; to secure to that part of that Indian tribe, which was friendly, indemnity for losses sustained in the destruction of their property; and also to indemnify the inhabitants of the frontier of the then Mississippi Territory, for the losses they had sustained by the ravages of the hostile Indians. For the investigation of the rights of the latter, I wish this information to be used: if it was the design of the Government that their rights should be recognized and provided for by the treaty; and from this design an additional portion of lands taken, besides those expressly provided for in the treaty, to wit: the Government losses, and losses of friendly Indians; then this class demand indemnity as a *right*; if not, they rely upon your liberality. I am well aware that General Pinckney bore no part in the formation of that treaty; but I have reasons to believe that the correspondence between the Department and Gen. Pinckney disclosed the views and wishes of the Government; and that these views and wishes were designed to be a part of the instruction to the distinguished individual who afterwards formed the Treaty. This is my object for submitting this proposition. I therefore hope the House will adopt it.

The resolution was then agreed to.

And the House adjourned to Tuesday.

TUESDAY, December 27.

*Losses in the Collection of Customs.*

The resolution offered by Mr. DWIGHT, a few days ago, calling for a statement of losses in the collection of the customs, and amended on the motion of Mr. WURTS, having been read—

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Mr. WURTS offered the following modification thereof, which was accepted by the mover:

*Resolved*, That the Secretary of the Treasury be directed to inform this House, whether any, and what, deviations from the instructions given by that Department, or from the course prescribed by law, for securing and collecting the duties on imposts and tonnage, have recently taken place; and whether any, and what, extraordinary losses have been, or are likely to be, sustained by the Government, in consequence of such deviations, or from any other cause: stating particularly the circumstances attending them, so far as they may have come to the knowledge of the Department.

The question being on agreeing to the resolution, as modified—

Mr. FOSYTH said, that he presumed the resolution alluded to the late transaction at Philadelphia. The public rumor on that subject was, he thought, sufficiently definite. It stated that certain property had been removed from the custom-house in that city in a clandestine manner; and, from hearing the resolution once read, he thought its language was not calculated to obtain for the House the information that was most needed. He therefore suggested, as an addition, the following: "And, also, what losses are likely to be sustained by the fraudulent removal of property from any of the custom-houses of the United States." If the mover declined accepting this as a modification of the resolution, he should offer it as an amendment.

Mr. WURTS replied, that it might turn out, on investigation, that the removal of the property alleged to have taken place, was not "fraudulent." He thought it would be improper to use this language, unless the circumstances were more fully known, and the House was certain that the language would apply. He thought that the terms of the resolution were sufficiently definite, as now worded. It goes to inquire what deviations have taken place from the instructions, issued by the Treasury Department, to the Collectors, in reference to this subject, and what losses have happened, or are likely to occur, in consequence of such deviations or neglect on the part of the officers of Government. For himself, he said, he had no personal knowledge that any special instructions whatever had been given on this subject. Public rumor, however, said that there had, and that they were such as would fully exonerate from blame the Collector, in whose office the loss had occurred. Whatever might be the facts of the case, it was no more than justice to all parties, that the truth should be known respecting it.

Mr. WEBSTER expressed a hope, either that the amendment would be withdrawn, or that the House would think the resolution, as originally offered, sufficiently broad. He apprehended that the amendment now proposed, would create a much stronger difficulty than it proposed to remove. Whether property had

been illegally removed from the warehouses of the United States, was a question that must be judicially decided. Such an act might be performed legally, as respected third persons, and still the conduct of the officers of Government be very reprehensible. Now, he considered the great points of this inquiry to be, first, whether these officers had done their duty, and, secondly, whether the loss had accrued in consequence of their having done it or not. If the loss had happened without blame to the officer, it must be owing to some defect, either in the statutory provision, or in the instructions issued by the Department. For himself, he apprehended it would turn out that no instructions had been given. By law they could not. Interpretations of statutes had, indeed, sometimes been given by the heads of Departments, but the constitution knew of no such thing as rescripts from the Treasury, declaring in what sense the law should be understood. No commands from the Treasury could make that right which the law had pronounced to be wrong; nor could it make that a crime which the law allows. All that the House, in this case, wanted to know, was substantially reached by the resolution in its present form. It asked whether any deviation had taken place, either from law or from the instructions received from the Treasury; and whether, in consequence of such deviations, if there had been such, any extraordinary losses had been suffered by the United States. This he conceived to be the proper inquiry. If it should even be found that the removal of the goods had been illegal, he did not see that the fact would help the House in any way to reinstate the Treasury. All that the House wanted to know was, whether the loss had been occasioned by a departure from the law, or by a defect in the law. This object would be attained by the original resolution.

The question being then taken on the amendment proposed by Mr. FOSYTH, it was decided in the negative.

Mr. POWELL observed, that, if it were important to get the information in this case, he thought the resolution stopped short of its own object. If the House learned that any extraordinary losses had taken place, it should also be informed what steps had been taken by the Department in consequence. If the losses suffered were, as had been reported, of an extraordinary character, it was to be presumed that some extraordinary steps had been taken to meet the emergency. With a view to ascertain this, he offered the following amendment:

"And whether any, and what, steps have been taken by any officer of the Government, in relation to any such losses, if such have occurred."

Mr. BUCHANAN said he thought it due to the Collector of the port of Philadelphia, that the amendment proposed by the gentleman from Virginia should pass. If a long life of unsuspected integrity and public usefulness could

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constitute a claim to the favorable consideration of the House, this amendment should be adopted in justice to that officer. The resolution introduced by his colleague (Mr. WUERTS) embraced not only the inquiry, whether goods had been illegally removed from the stores of the custom-house, but also, what had been the conduct of the officers who had those goods in charge. If it should be ascertained that these goods had been illegally removed, then the case would present an aspect in which the information asked by the amendment might become very important. There was a striking difference between negligence and intentional guilt. If it should eventually appear that the losses sustained by the Government proceeded from the illegal conduct of the Collector, which, however, he did not believe to be the case; then it would be highly important to know, what had been his conduct immediately after the discovery and disclosure of the transaction. If every exertion upon his part had been promptly made to protect the public interest and repair the injury which had been done, it was a circumstance which ought to go far in redeeming his character from the imputation of an intentional violation of the law, and was a fact which, in justice, should be made known. Mr. B. said he concurred in the sentiments expressed by his friend from Delaware, except in the opinion that the object proposed by the amendment ought to be a distinct subject of inquiry. He thought it was one entire transaction, and that justice to the parties concerned required that the whole information should come together from the Department.

The question was then taken on Mr. POWELL's amendment, and it was agreed to withhold a division.

*Post on the Northwest Coast.*

On opening a Message, received from the President, the Speaker announced the same to be of a confidential nature. The galleries were cleared, and the doors closed, and so remained for some time. When they were opened again, it was ascertained that the injunction of secrecy in regard to its proceedings, had been so far removed as to allow the publication of the Message of the President, which was as follows:

WASHINGTON, 27th Dec., 1825.

*To the House of Representatives of the United States:*

In compliance with a resolution of the House of Representatives, of the 20th inst., I now transmit a copy of the Message of President Jefferson, to both Houses of Congress, of 18th January, 1803, recommending an exploring expedition across this continent. It will be perceived, on the perusal of this Message, that it was confidential; for which reason, the copy of it is now communicated in the same manner; leaving to the judgment of the House to determine, whether any adequate reason yet remains for withholding it from publication. I possess no other document or information in relation to the same subject, which I consider as coming within the scope of the resolution of the House.

JOHN QUINCY ADAMS.

The letter of Mr. JEFFERSON, referred to in the Message, is yet concealed under the veil of confidence, which may or may not be removed by a subsequent vote of the House.

WEDNESDAY, December 28.

*Proposed Pension to Mrs. Denny.*

On motion of Mr. STORES, the House went into Committee of the Whole, Mr. CONDUCT in the chair, on the bill for the relief of Penelope Denny.

[The bill proposes to allow to Mrs. Denny a half-pay pension, on account of her son, on whom she was dependent for bread, he having been killed in an action with pirates, while serving in the capacity of gunner in the Navy.]

The bill having been read,

Mr. CAMBERLING said, that, when this subject was under discussion at the last Congress, exception was taken to the bill, that Mrs. Denny, in all probability, had other sons surviving, on whom she might rely for support. Mr. C. said he was satisfied at the time that such was not the fact, but, to satisfy the House on this subject, he had procured affidavits from New York, showing that the deceased was her only son.

The affidavits were read.

Mr. STORES (the Chairman of the Naval Committee) explained the views of the committee in reporting this bill. The petitioner, he said, was, as appeared from the documents of the case, the mother of a petty officer in the Navy, who was killed in action with the pirates, (at the same time that Capt. Allen was killed,) who was totally dependent on her son for support. Whilst living, her son had appropriated one-half of his pay for her support, and, when he sailed on his last voyage, left directions to the proper officer, to pay his mother half of all the pay which should become due to him during his absence. She has lost her only prop, in the service of the country, and seeks the same provision which the law would have made to her, had she been the widow, instead of the mother, of the deceased. In the case of the mother of Lieut. Allen, killed at the same time, a bill was pending, and would doubtless have passed, at the time, but for her death, which took place whilst the bill was under discussion. The principle of the bill went no further than this: that, if any person engaged in the Naval service shall be killed in battle, having no wife or child, but leaving behind him a mother, dependent on him for support, the half-pay pension system should be made to embrace the case of the mother. Conceiving this to be a just principle, Mr. S. supported the bill.

Mr. WORTHINGTON observed, that, as he was about to give a vote on the subject now before the House, he conceived it his duty to offer a few reasons in support of the vote he should give. It appeared to him to be a case of the first impression, and we were now about to set a precedent for those who were to follow us. We appeared to be legislating on a

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hereditary principle. We are now called upon to grant a pension to the mother, in the ascending line, and we might go on *ad infinitum* on the same principle; we might go on, also, in the descending line, to the son, grandson, and so forth. If we once adopt the principle, we shall know not when to stop. Sir, said Mr. W., we ought not to put our hands into the Treasury on every occasion—we ought to husband our resources. We ought to grant pensions to none but those who have actually been maimed or disabled in the cause of their country, and not to their relations. We ought to take example from other countries in relation to this subject. It had grown to be an immense evil in England, and, at the commencement of the French Revolution, was a crying grievance, which the people of that country brought in accusation against their King. If the man himself, who suffered on the occasion referred to, were living, no person would be more willing to grant relief than himself. But, as the case now stands, he was decidedly against the bill. The committee then rose, and reported the bill without amendment; when

Mr. MALLARY, observing that this case must be new to many members of the House, with a view to allow them time to become better acquainted with it, from a consideration of what had been said, moved that the bill lie on the table. The motion prevailed, and the bill was ordered to lie on the table accordingly.

THURSDAY, December 29.

*Cultivation of the Mulberry Tree.*

Mr. MINER, of Pennsylvania, offered the following:

*Resolved*, That the Committee on Agriculture be instructed to inquire whether the cultivation of the mulberry tree, and the breeding of silk-worms, for the purpose of producing silk, be a subject worthy of legislative attention. And should they think it to be so, that they obtain such information as may be in their power, respecting the kind of mulberry tree most preferred: the best soil, climate, and mode of cultivation: the probable value of the culture, taking into view the capital employed: the labor and the product, together with such facts and opinions as they may think useful and proper.

*Resolved*, That the committee inquire whether any legislative provisions are necessary or proper to promote the production of silk.

On offering this resolution, Mr. MINER wished to say one word, with the hope of obtaining for it a favorable reception. In looking over the report of the Secretary of the Treasury, of last year, he had observed that the amount of silks imported into the United States was \$7,288,784, whilst the whole amount of bread stuffs exported was but \$6,718,595, being more than a million less than the value of imported silks. The amount of tobacco exported was a little over four millions. The value of the whole products of the sea, including the fisheries, was less than a million and a half, and that of all the productions of the forest was not five millions. He

stated these facts merely with a view of showing that the cultivation of silk might be an interest worth cherishing. He did not, he confessed, foresee that any legislative provision would grow out of this inquiry, but he wished that the committee should inquire—that they should spread the result of their inquiry before this House and before the nation. Its publication would at all events be useful, and it might happen that farther legislation would be required on the subject, in consequence of the information to be received.

The resolutions were agreed to.

TUESDAY, January 8, 1826.

*Sedition Law.*

Mr. WEBSTER, from the Committee on the Judiciary, made the following report on the petition of Thomas Cooper:

"The Committee on the Judiciary, to which was referred the petition of Thomas Cooper, report:

"That the petitioners sets forth that, in the year 1800, he was indicted and tried, under the provisions of the act of July 14, 1798, commonly called the Sedition Law, for publishing an alleged libel on the then President of the United States; that he was found guilty, and sentenced to be imprisoned six months, and to pay a fine of four hundred dollars. Having paid this fine, he prays Congress that it may be restored to him, with interest, on the grounds, first, that what he published was no libel, and, secondly, that the act before mentioned was unconstitutional.

"The committee have considered the case, and agree to report that the petitioner have leave to withdraw his petition."

Mr. HAMILTON said, that he hoped that the gentleman from Massachusetts would add to his report "that the report of the committee, with the petition of the petitioner, be printed." He would much prefer that the motion should come from that gentleman, as it was no more than an act of ordinary comity to the individual concerned, and it, moreover, surely, was little else than an act of bare justice, that the House should be accurately informed, not only of the grounds on which the petitioner's petition had been rejected, but that they should likewise be made acquainted with the character and extent of the claim of the petitioner, the wrongs of which he complained, and the reasons, by his own showing, why redress ought now to be accorded to him. Mr. H. said he would wait, with the hope that the gentleman would make the motion in question before he troubled the House with one of similar import.

Mr. WEBSTER said, that, supposing there was no possible objection to a long argument against the law of 1798 being read, he doubted whether it would be thought worth while to print it. He had no personal objection to that course, if preferred by the gentleman from South Carolina. If that gentleman meant to call up the report for the purpose of controverting the conclusion to which the committee had come, then it might be proper to have all the papers printed. But

he was not particularly disposed, for the gratification of individuals merely, to have their disquisitions printed for the use of the House. He had not been instructed by the committee to move the commitment or printing of the report; but, if the memorial was printed, he presumed it would be proper to print the report also.

The question was then taken on printing both the report and the memorial, and decided in the affirmative.

WEDNESDAY, January 4.

*Appointments of Members of Congress.*

The resolution offered by Mr. TREZVANT calling on the President for a list of appointments given by the Executive, to Members of Congress, since the foundation of the Government, was taken up.

Mr. McDUFFIE asked that the resolution might be read again; and the resolution having been read accordingly,

Mr. TREZVANT observed, that it was probably recollected by the House, that, about a fortnight before, a resolution had been laid on the table, by an honorable member from Tennessee, (Mr. MITCHELL,) the object of which was to prevent the acceptance of appointments from the President, by members of Congress, during their term of service. The intention of the present call was to obtain the information which would be requisite to an enlightened consideration of that resolution. If, as is supposed by many, an evil is to be removed, the House must first know the evil before it can apply the remedy; and how can it proceed more properly in determining on the existence of the evil, than by first getting information from the Executive itself, as to the extent of the practice alluded to? All the appointments to office are made through the President; and on the files of his office, a memorandum of all of them is preserved. This record is the only source from which the information sought by the call can be obtained. Why, then, should the consideration of the resolution be postponed? For what purpose must it lie on the table? What will be the advantage of delay? A considerable time will necessarily be occupied in making the investigation, after it shall be called for: there ought, then, to be as little delay as possible in making the call. If the present resolution is laid on the table, the House will probably be called to act on that of the gentleman from Tennessee, without having this information before them. I do not say (added Mr. T.) that the evil alluded to does exist; but the resolution of that gentleman is of itself sufficient to show that an apprehension is entertained in some directions that it exists, and needs correction. Such an imputation, if not just, ought to be wiped off as soon as possible. If such appointments have not been made to any great extent, the fact will so appear; but if, on the contrary, the evil, as is said, both exists, and is growing, then it is time that a proper remedy should be applied. No possible evil can result from the

call; some good possibly may. Mr. T. said he hoped, therefore, that his motion would be adopted.

Mr. FORSYTH observed, that, to oppose any call for information, deemed important by any gentleman, was, at all times, an ungracious task. He had never voted, and should not, at this late hour of his Congressional life, begin to vote, against any such call. He would suggest to the honorable mover of this resolution, whether it would not be much better to give the present call a different direction. The President of the United States is now called on for this information. It was proper to call on that officer for all information of a strictly executive character, and, so far as the appointment of the persons was concerned, the information now required was of that character. But how can the President ascertain whether all the persons who have received such appointments were, or were not, members of Congress at the respective times of their appointment, or for six months before? He would ask, whether it was consistent with that decorum and decency which was due from one branch of the Government to another, to ask the President of the United States to come to the records of this House, and there get certain information, to be immediately handed back by him to the House? All that he wanted from the President was a list of appointments made within the period embraced by the resolve. The House has already a list of its own members. A comparison of these two lists would enable each gentleman to determine for himself the question of fact. This, too, would answer another part of the resolution, by giving the emoluments of the officers respectively, and also the States from which the members came. If, however, the gentleman wished to get this information in a condensed form, the better way would be for him to ask for the appointment of a select committee, to whom the subject might be referred. Such a committee would present all the facts in a report. And here, said Mr. FORSYTH, let me make a remark. The gentleman has stated to us in this Hall that this is a great and growing evil. An evil, sir? What evil? It is a constitutional evil, if it be one at all; it is one which was anticipated and intended by the constitution, and which, in my opinion, has as yet produced no injury to the interests of the country. I know, indeed, that, in some parts of the United States, the opinion is entertained, and no doubt honestly, that this business of appointment of members of Congress to office, has gone to very improper lengths, is liable to an improper use, and productive of undue influence. Sir, this may be so; but I trust that it will not be assumed as a fact, that the power of appointment has been thus improperly used. If the charge is made, let it be brought home against the President, or any other individual, and we have the power to apply the remedy. We can punish both the corrupter and the cor-

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rupted. Here is the proper place for such an investigation. If any gentleman is satisfied that there have been improper practices in this respect, he can bring the offender here for punishment. But, said Mr. F., I would suggest, if any inquiry is to be gone into, it must be gone into still deeper. You must inquire, not merely who have obtained offices, but who have obtained contracts from the Government? whose brothers, whose fathers, whose friends, have got advantageous contracts? And, further still—whose fathers, brothers, and friends, have been recommended to, and actually received offices under, the Government. These, said Mr. F., are sources of corruption equally dangerous with that now in question, and, when we begin the inquiry, these, also, should be examined.

Mr. WEBSTER observed that as the honorable member from Virginia seemed to think this inquiry of importance, and as he presumed there were none who wished to exclude the information which he sought—the only objection being as to the mode of obtaining it—he would suggest to that member, that he should move to amend his resolution, so as to refer the inquiry which it proposed to a committee of this House. The records of the Department of State, and those of this House, would be both accessible to the committee, and, from consulting them, the committee would be able to give to the House all the information which could be obtained on this subject.

Mr. FLOYD said, that when an amendment to the constitution had been formerly proposed, to prevent members of Congress from holding any office under the Government of the United States, for a certain length of time, after the term for which they had been elected should have expired, he believed he had voted for it, as he thought it a wise precaution to preserve the liberty they had, and the House free from the imputation of motives; that he would not attribute any thing like motive to the present members, as he believed all to be very just, and perhaps the times very honest. But the time might arrive, when we might see a dove-tailed administration claiming all power, infringing on what some called, and which he believed to be, State rights. He did not wish to fight, as the barons of England had done, to limit the prerogative of the crown, but wished to see so much power exercised as was granted expressly in the constitution, and no more. To take away the hope of office, might be useful at a future day, when office might be more desirable; nor could he conceive why the gentleman from Georgia, who has so much talent, and whom all knew to be so upright, opposed this resolution, as it was only a call for information, which certainly could be better furnished by the President than by a committee of the House, and who has made a speech on the subject much longer than he is accustomed to do on such subjects. If there is difficulty with the President and the departments, there would,

in his opinion, be much more with a committee. The gentlemen now called on for information were well paid for little labor, and he did not think it would be a very heavy task to produce the information wanted.

The question being taken on the amendment, it was negatived.

Mr. TREZVANT rose, not to make any further observations on the resolution, but to ask that the question on its adoption might be taken by yeas and nays.

The question was so taken on the adoption of the resolution, and decided as follows—yeas, 144, nays 42.

So the resolution of Mr. TREZVANT was agreed to.

### *The Judiciary System.*

The House then again resolved itself into a Committee of the Whole, on the bill further to amend the Judiciary System of the United States.

[This bill proposes, That the Supreme Court of the United States shall hereafter consist of a Chief Justice and nine Associate Justices, and provides for the appointment of three additional Associate Justices of said Court.

That the seventh Judicial Circuit of the United States shall hereafter consist of the Districts of Ohio, Indiana, and Illinois; the eighth Circuit, of the Districts of Kentucky and Missouri; the ninth Circuit, of the Districts of Tennessee and Alabama; and the tenth Circuit, of the Districts of Louisiana and Mississippi.

It repeals so much of any act or acts of Congress, as vests in the District Courts of the United States in the Districts of Indiana, Illinois, Missouri, Mississippi, Alabama, and Louisiana, the powers and jurisdiction of Circuit Courts, and provides that there shall be hereafter, Circuit Courts for said Districts, to be composed of the Justice of the Supreme Court, assigned or allotted to the circuit to which such districts may respectively belong, and of the District Judge of such districts.]

FRIDAY, JANUARY 6.

Mr. STEWART offered the following:

*Resolved*, That the Committee on Roads and Canals be instructed to inquire into the expediency of making provision for the erection of a bridge on the National Road, where it crosses the Monongahela, at Brownsville, in Pennsylvania.

Having offered this resolve—

Mr. STEWART rose to make a single remark, in explanation of its object. It would be recollected by the House, that the Committee on Roads and Canals had been instructed, on his motion, a few days since, to devise a permanent system for the preservation and repair of the Cumberland road. The erection of this bridge, he said, might very properly constitute a part of this system. Without this bridge, the road was incomplete, and inadequate to the great



object of its construction. It was a fact, notorious in the West, that the public mail and the public travel had been frequently interrupted, for days together, during the winter season, by the ice and floods upon this river. By referring to the files of the House, gentlemen would find an official communication from the late Postmaster General, stating the fact that the frequent delays and failures of the great western mail was owing to the impassable condition of this river; and that the only means of preventing them, in future, was the erection of the bridge mentioned in the resolution. Every river and stream upon this road, from one end of it to the other, had been bridged, except the Monongahela, at Brownsville. There was no reason why it should form an exception. Without this bridge, the road itself was incomplete. It was a broken link in the great chain of connection which this road constituted between the Eastern and Western States. It ought to be repaired. He therefore hoped the resolution would be adopted, and the Committee on Roads and Canals authorized to make provision for the erection of this bridge, in the bill providing a permanent system for the preservation and repair of the Cumberland road.

The question being then taken on this resolution, it was decided in the affirmative—ayes 70, noes 47.

TUESDAY, January 17.

*Florida Wrecking Law.*

Mr. WEBSTER, from the Judiciary Committee, reported, without amendment, a bill from the Senate, "to annul an act concerning wreckers and wrecked property," passed by the Governor and Legislative Council of the Territory of Florida.

Mr. WEBSTER, in reporting the bill without amendment, explained briefly the facts which had given occasion to it. It appeared that, in consequence of a state of things which existed on the coast of Florida, and its vicinity, in relation to wrecked property, the Governor and Legislative Council of that Territory had passed an act, which was found in practice to be productive of some pretty strange effects—and which had led to evils so great as to attract the attention of Congress. The whole subject, he said, is of a character which requires legislative provision—and there being no court of admiralty near the scene of these wrecks, the Legislative Council of Florida had interfered; but, in doing so, had exhibited a course of pretty wild steering—and, in a word, had exercised their power in a manner not calculated to produce any good effects to the sufferers. The whole subject was before the Committee on the Judiciary, who had it in contemplation to report a bill concerning it: but they were of opinion that, meanwhile, no time should be lost in annulling the act of the Legislative Council of Florida; and they, therefore, re-

ported the present bill from the Senate without amendment.

Mr. WHITT, the delegate from Florida, said he had no objection that the bill should pass to a third reading. He wished, however, to state, that he was convinced the Legislative Council of Florida, in passing the act now to be annulled, had been animated by good intentions only. The losses which were occurring on the reef were of such a character, as needed some legislative interference. The courts, to which the property lost was to be carried for adjudication, were remote—and they thought that the act they passed for the relief of the injured parties, would receive the sanction of Congress. It had, unfortunately, happened that great abuses had grown out of the act. These would, of course, be corrected by Congress, and he presumed some special law would be passed on the subject. He had only risen, at this time, for the purpose of vindicating the Council from any intention to transcend the powers entrusted to them, or to do injustice to the persons whose interests might be brought into question under their act.

The bill was ordered to a third reading tomorrow.

*Balances Due from Land Officers.*

A resolution, offered yesterday by Mr. SCOTT, calling on the Secretary of the Treasury for a list of balances due by Receivers of Public Moneys, for the sale of Public Lands, to the 1st January, 1826, was taken up.

The resolution gave occasion to some conversation, between the mover and Mr. SLOANE; the latter asking for an explanation, whether the resolution was aimed at Receivers now in office, or those who had gone out of office. These officers are appointed for four years, and cannot, at the end of that time, be reappointed unless all arrears are paid up. This, Mr. S. conceived a sufficient guarantee for the honest discharge of their duty. Their deposits might have been made by those now in office, on the first of January; but according to the terms of the resolution, these deposits would not appear to their credit; and so an imputation might be cast upon honest men, who did not deserve it. He moved to amend the resolution, by adding the words, "not now in office."

Mr. SCOTT replied. By the existing law, he said, balances which have remained due more than three years, are required to be reported to this House. A list has, accordingly, been returned from the Treasury, but it includes only balances due for three years, on 30th September, 1825. Any balances which may have become due within that period, are not included. Mr. S. said he had heard that one Receiver, who had been out of office for four years, had run off with \$68,000 of the public money: and that another, who had been out of office one year, had gone off with \$25,000. His object was to inquire into these facts. He thought the House had a right to know them. From

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the returns required by law, this information could not be obtained; it must, therefore, be demanded by a special order of the House. He saw no reason why those in office should not as well be included, as those who had gone out of office. The object was to get at the amount of moneys received; of moneys receivable, and of moneys embezzled. He thought the public eye should be drawn to these facts. If corrupt men were in office, they ought as much to be exposed, as corrupt men who were out of office.

After some further observations, Mr. SCOTT consented to modify his resolution, by substituting 30th *September*, 1825, for 1st *January*, 1826. Upon which,

Mr. SLOANE withdrew his motion for amendment, and the resolution, thus modified, was adopted.

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• Mr. BUCKNER said, the permanency of the Supreme Court was scarcely more to be desired than that of the inferior tribunals. But it was not within the ken of human foresight to declare either the particular number of those inferior tribunals, which the exigencies of a rapidly increasing nation might require, or the precise principles on which they should be organized. Those matters were of necessity submitted to the wisdom and future experience of Congress. But if stability was important, when that feature of the present bill, which requires the performance of circuit court duties by the Judges of the Supreme Court, had received the approbation of the American people for so many years; when the utility and wisdom of such a requisition had been tested by the experience of upwards of thirty-five years; ought we not to regard it almost in the light of a constitutional provision? Were a proposition made to change the constitution itself, I would not approach it with more caution. In 1789, we are informed, that the first statute was enacted in relation to the judicial power of the United States. In that law you find the same feature which the present bill presents. That statute remained unaltered until 1793, when the subject was again presented to the consideration of Congress. The time was too short to give to it the character of a fixed policy at that period. But let us pursue its course farther. The system was continued without any change, in the principle alluded to, until 1801, when the acts of '89 and '93 were repealed, the Judges of the Supreme Court were separated from the circuits, and Circuit Judges were appointed. In 1802, the act of 1801 was repealed; and thus well nigh did the same year witness the birth and the death of this system of 1801. The act of 1802 brought us back to the principle of the law of 1789 and 1793, so far as they required the Supreme Judges to attend at the circuits; and thus was furnished strong and persuasive evidence of a most decided preference by Congress for that course. I shall not

stop here (said Mr. B.) to inquire into the considerations which conducted to the repeal of this law of 1801, from any other source than that which the statute itself furnishes. To attribute its repeal to any other cause, than a conviction on the part of those who voted for it, that the plan of 1802 was superior to that of 1801, would be an uncharitable imputation of corrupt motives to the majority of Congress, which ought not to be indulged. Thus stood the law until 1807, when the matter was again brought before Congress. It began now truly to be entitled to the appellation of a fixed policy. But could any doubt be reasonably entertained on the subject, was it not entirely dissipated, when, in that year, the wisdom of the measure having been fully and completely tested, Congress not only continued, but extended the system? They did in principle then what the advocates of this bill insist ought now to be done. Yet the gentleman from Virginia (Mr. POWELL) considers this as no indication of an intention to ingraft on the system this principle as a matter of permanent policy. He tells us that it was merely an experiment, and one which ought cautiously to be indulged in; and as an evidence that they did not contemplate uniformity, he reminds us that, in Kentucky and Maine, district courts only were established. But did the gentleman recollect that Maine was at that time a part of Massachusetts, and Kentucky a part of Virginia? Every State in the Union had its circuit court, by the provisions of the act of 1802; nor is there the least ground upon which to conclude, from the establishment of district courts in Kentucky and Maine, that uniformity was not within the contemplation of Congress, to be carried into effect on some convenient occasion. Such a conclusion is altogether inadmissible, because the present circuit system has since been extended to them. At this very time, eighteen States out of the twenty-four are enjoying its benefits, not one of them willing to be deprived of it; and yet we hesitate to place the remaining six States upon the same ground that the eighteen States occupy. But, Mr. Chairman, (continued Mr. B.) are we not bound to believe, that, according to this plan, justice in the inferior courts, if not more promptly, is at least more ably and satisfactorily dispensed? I shall not insist that the ability of a judge is always in an exact ratio to the salary which he receives: but talents, like commodities carried to market, have their price; and it is in vain that we may expect to secure an equal degree of legal acquirements and strength of intellect, for the sum of fifteen hundred or a thousand dollars, which is the salary of some of the inferior judges, as we can for four thousand five hundred dollars—the salary of a Supreme Judge. That the Judges of the Supreme Court, by performing circuit duties, obtain a more accurate and thorough knowledge of the municipal laws of each State, than they would otherwise do, is

an argument entitled to very considerable weight; but it has been so fully urged by gentlemen who have preceded me, that I shall not dwell upon it. But, sir, if the six States alluded to had no other or stronger ground on which to urge their claims to an equal participation in the benefits of this system than that the other States enjoy its benefits, I should consider the reason as altogether resistless. I know it may be replied to this, that justice is as promptly, and in some cases, perhaps, as correctly administered by a District Court, with Circuit Court powers, as in a Circuit Court. We might, in like manner, tell those States, that they may send delegates to Congress who may present their petitions and explain their grievances, but that they shall be entitled to no vote in this House; that Congress is too large and unwieldy a body; and that, to permit their representatives to appear on this floor with all the rights and privileges of a representative from one of the older States, would be likely to create faction. We know that this cannot constitutionally be done; but who is there, in the least acquainted with the feelings and character of the American people, who does not also know, that, if the constitution even permitted such a course, and it were attempted, nothing short of the power of Heaven could preserve this Union for the space of one year! Such a doctrine is repugnant to the genius of our constitution, and destructive of the best established principles of our liberty. We have, indeed, been told by the gentleman from Virginia, (Mr. POWELL,) that the people of the West will receive no practical benefits from this measure; that it may be a matter of feeling and of pride, but nothing more. Yes, sir; and permit me to inform that gentleman, that it is a high-minded, honorable pride. It is that kind of pride which swells with patriotic emotions the breast of an American, in whatever clime he may be, when he exclaims that he is an American citizen. They are feelings which ought not, *can not*, be disregarded with safety.

It is the conviction only which each State of the Union feels, that it is, alike with every other, the object of the paternal regard and protection of this Government, that can give strength and durability to the ligaments which bind us together; that can preserve unimpaired that Union, which, I hope and trust in God, will effect for us in a political, what faith does in a religious point of view—everlasting salvation.

But, Mr. Chairman, let us consider their claims still farther. Do not these six States contribute their due proportion to meet the expenditures of the Government? and have not they, and all the Western States, most valiantly and magnanimously defended the rights of our common country? Behold North Carolina, with business not more than sufficient to detain the Circuit Judge, according to the acknowledgments of the gentleman from that State, (Mr.

MANGUM,) two or three days at a term, receiving the aid of the learning and talents of Chief Justice Marshall, while, in some of the States, a District Court Judge presides with the paltry salary of a thousand or twelve hundred dollars. Is this just—is it fair? Do gentlemen believe that large and respectable portions of the United States intend to submit to this state of things, and to have the system, in its present circumscribed condition, fastened upon them as a course of settled policy? If so, they labor under erroneous impressions; and the sooner they are undeceived, the better.

But, Mr. Chairman, said Mr. B., the provisions of this bill are not exclusively for the benefit of the people of those States who are the most anxious for its success. The rights of the citizens of every State in the Union are affected by them. Why has jurisdiction been conferred on the Federal Courts, in legal controversies between citizens of different States? Because the wise men who formed our constitution, well versed in the volume of human nature, anticipated, and thus intended to guard against, that partiality and State feeling, with which a judge of a State court might sometimes take his seat on the bench. I submit it, therefore, to the gentlemen who are pleased to speak of this as a Western bill, to determine, whether plaintiff or defendant is most likely to be injured by an injudicious organization of the inferior tribunals of the United States.

But, Mr. Chairman, we are told, that no complaints have been heard from any other parts of the United States, except from Ohio, Kentucky, and Tennessee. I have myself heard the opinion of some of the gentlemen from other Western States, in favor of this bill; and I have no doubt that they will, unanimously, join those three States in demanding, as a matter of *right*, that their States, respectively, shall be embraced within the arrangement of the Circuit Court system: a demand, not made in a supercilious and arrogant spirit, but with an unhesitating confidence in the intelligence and sense of justice of this honorable committee.

I come now, sir, to speak a few words of the claims of Tennessee, Ohio, and Kentucky; but, more particularly, of the latter. We find on the docket of the Federal Court in Kentucky, nine hundred and fifty suits, many of them of the most complicated character, requiring attention and patient investigation. Those acquainted with the nature of litigation in that court, are aware that there is no reasonable hope of any considerable diminution of it for many years. On this point, the remarks of the gentleman from Illinois, (Mr. COOK,) as to the Northwestern States, were alike applicable to Kentucky. The titles to real estate, through the largest and most fertile part of the State, indeed, in all that part of it subjected to location under Treasury warrant claims, issued by the State of Virginia, were derived from that State; and, of course, in every controver-

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sy respecting those titles, when coming in conflict with a title derived from the State of Kentucky, the jurisdiction of the Federal Court attaches. The titles to real estate in Ohio and Tennessee, constitute a source of litigation but little, if at all, inferior to those of Kentucky. He would not detain the committee by speaking either of the Occupying Claimant Laws of Kentucky, or the apprehension which Virginia appeared to feel, that this bill was designed by Kentucky, as a prelude to a reversal of the decision of the Supreme Court in the case of Green and Biddle, upon the constitutionality of these laws. The gentlemen from that State need not fear any such result. The validity of those laws had, to be sure, been tested in the crucible of judicial investigation, in both the inferior and superior courts of that State, and had been uniformly supported, both by the judges of that State, and by a very large majority of its ablest lawyers; and, when decided upon in the Supreme Court of the United States, of the four judges on the bench, one was in favor of them. But the opinion of the three determined the principle, and Kentucky was thus bound to abandon a policy which she regarded as essential to the improvement of the State, and the security and repose of her citizens. Judge Marshall, as we were informed by the gentleman from Virginia, through motives of delicacy, omitted to take his seat on the bench, when that case was decided; but yet, the same gentleman tells us, that his opinion coincided with a majority of the court. The whole difficulty in relation to that subject, had, to be sure, originated in the Legislature of Virginia. That State, through her Legislature, had issued warrants for the location of at least three times the number of acres which were contained in the territorial limits of Kentucky; and had made it necessary, by the law on that subject, to make the entry so special, that subsequent locators might be enabled to locate with certainty the adjacent residuum; a degree of precision, which, in many cases, was absolutely impracticable. But this was irrelevant in the discussion of the principles of the present bill. It is sufficient for my purpose to show, that, such is the number of suits, however they may have originated, now pending in the Federal Court of Kentucky, and such the difficulty of their determination, that there exists an absolute necessity of some redress. It had, indeed, been admitted, that the situation of business in the Federal Court of that State, imperiously demanded legislative interference. But a remedy had been proposed by the gentleman who made the acknowledgment, (Mr. POWELL.) He was willing that a judge should be appointed, with a competent salary, equal even to that of a Judge of the Supreme Court, but that he should not be allowed to take a seat on the bench of the Supreme Court. I cannot believe that there was an intention to cast any reflection upon the West, because the gentleman remarked, that he had no doubt, men of

great talents, and every way adequate to the discharge of so important and arduous a duty, might be found in the States of Ohio, Kentucky, and Tennessee. But, sir, a moment's reflection ought to be sufficient to satisfy the committee, that a proposition to send us a mere land commissioner, would be rejected unhesitatingly and indignantly. The people of the West will not rest satisfied with one single mark of respect less than that which is bestowed on any other portion of the United States.

But, Mr. Chairman, it has been objected, said Mr. B., that, should the bill pass, the number of the judges, for the discharge of ordinary business, would be inconveniently large. Such, if I recollect aright, was the opinion advanced by the gentleman from Massachusetts, in whose judgment, and particularly, in any matter relating to the Judiciary, I have very great confidence indeed—but, on this point, I must beg leave to differ from him. I regret that he did not assign the reasons on which he founded that opinion. No complaint has been made, that the present number of judges is inconveniently large. If ten would be too many, on what point shall we determine to settle, as the precise maximum? The proposed increase may not, indeed, it is very certain that it will not, be calculated to expedite the determination of business in the Supreme Court—but expedition is at best a matter of secondary consequence—correctness is always of primary importance. The supposition, that, by the introduction of three additional judges, a faction may be created on the bench, is utterly visionary—it is any thing short of *ridiculous*. The history of the world presents no example of such a result. If, indeed, they were an assembly of legislators, chosen for short periods, and of a number as great as that of which Congress is composed, anxiously anticipating the result of an approaching election, willing to flatter popular prejudices to procure a short-lived popularity, faction might rear its head among them; but a judge, who receives a salary of four thousand five hundred dollars per annum—not more secure in the tenure of his office, which he is to hold during good behavior, than in the amount of his salary, cannot be suspected of a disposition to faction: he is above the atmosphere of popular prejudice, or popular excitement:—*Vox Populi vox Dei* is not the motto of his creed—he is satisfied with the existing state of things: for he could scarcely calculate on a change which would better his condition.

But, Mr. Chairman, comparisons have been instituted between our Judiciary system and that of England; and it was insisted that a smaller number of judges had there been found sufficient to determine all the legal controversies of that unequalled people. Mr. B. said he was willing to leave gentlemen to enjoy their opinions, and to pronounce their eulogiums upon the Judiciary, and if they please, the Government, of England: for his part, he con-

sidered neither the one nor the other as presenting fit models for the United States. Yet even there, on appeal, in the last resort, (although he wished to be understood as protesting against the comparison,) causes are decided by the House of Lords, aided by their twelve judges. We have also been told, that in all England, there is but one Lord High Chancellor. But if the gentleman will turn his attention to the Judicial history of England, he will find that such have been the vexatious delays in Chancery, under the English system, that they have amounted to a denial of justice. It has very often happened that one generation witnesses the commencement of a cause, and another, its end. But, sir, it appears that we are not only to regard the English judiciary system as worthy of imitation, but that we are also to admire even its anomalies. Our attention has been called to Wales, by the gentleman from Virginia, (Mr. POWELL,) who informs us that the courts in Wales are as distinct from those of England, as from the courts of the United States. This is, I believe, an error. An appeal lies to the courts of England. But a slight attention to the history of that country will show us, that this anomaly as to the courts of Wales, was not the result of the choice of the English Parliament, but rather of necessity. Wales remained, for several centuries after the Saxon invasion, unconquered, and independent of England. The son of Edward the First, became the first titular Prince of Wales. A statute in the reign of Henry the Eighth, placed them on the footing of English subjects, in most respects, except that they were permitted, as a matter of *favor*, as we are told by the English writers, to retain their courts independent of process from Westminster Hall. And six States of the Union are now to be permitted, I suppose, as a matter of sheer *favor*, to retain District Courts with Circuit Court powers, in which a judge, with a salary of \$800 or \$1,000, presides, while the remaining States are to have Circuit Courts with a Judge of the Supreme Court.

It has also been urged, that an increase of the number of the judges would be calculated to weaken the responsibility of each, and render the Executive careless in his selection of them. The argument is utterly untenable. Will not the judges be compelled to give their opinions in writing as at present, subject to the inspection of the world: and can it be supposed that a judge, occupying so exalted and conspicuous a station, will be willing to hazard his reputation for legal learning, under the hope that his brother judges will share with him in the disgrace? As little is it to be expected, that the Executive will select carelessly, or if even he did, that the Senate would confirm the nomination, because there would be ten instead of seven judges.

But, Mr. Chairman, continued Mr. B., it is principally with an eye to decisions on constitutional questions, that I believe an increase in

the number of the judges is most to be desired; and in this point of view, there is not the slightest analogy between our Government and that of England, or any of which I have any knowledge. The English Government is composed of two branches only—the Legislative, composed of the King, the Lords, and Commons; and the Executive, of the King only, who, through his judges, administers justice, and by the proper officers, executes their judgments. The Parliament is, of course, supreme. The English courts have no great constitutional questions to settle; no power of the Government to extend by construction; no will of sovereign States to control. They have nothing to do but to administer justice according to the principles of *meum et tuum*. But, Mr. Chairman, we have, in my opinion, arrived at a point, at which we are bound either to extend the present system, or to adopt the plan of 1801. Shall we hesitate which to do; when not only reason, but experience, the safest of all guides, points out the path so plainly? Are there not alarming evils to be apprehended by confining the judges to the bench of the Supreme Court only? Let it not be forgotten, that there is an extent of jurisdiction confided to them, unequalled by that of any other court in the world. From the nature of our Government, it is necessary that it should be so. There must be some tribunal, upon whose decisions those matters must depend, and there can be none more safely relied on than the Supreme Court, as it is at present constituted, composed of venerable and learned men, selected from the whole nation for their talents and integrity. I feel no alarm at the encroachments of the Federal Government, yet it is proper and safe to guard against them as cautiously as possible. A blind confidence is unwise. The gentleman from Virginia (Mr. POWELL) told us that he thought he could see the point beyond which all was danger. I, too, believe, Mr. Chairman, that I can see that point; but in a very different direction from that alluded to by that gentleman. "I fear no evil from the judges mixing with the people. I fear much more from confining them to the performance of duties within the District of Columbia. If the system of 1801 be adopted, and persevered in for half a century, the principles of this Government, at the end of that time, will, in my opinion, be very little more like that which prevailed in 1798, than the present Government of England is like that which existed in the reign of William the Conqueror. In the decision of all constitutional questions, I wish to see at least ten judges on the bench of the Supreme Court, and the concurrence of seven required to declare a State law invalid, or to determine upon the implied powers of this Government.

Mr. LIVINGSTON said he did not know that he should have troubled the committee with any remarks on a subject already so well discussed, if frequent allusion had not, in the

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course of debate, have been made to the State he represented, and if his support of the bill were not founded on somewhat different reasons from any he had heard expressed. I do not, said Mr. L., conceive myself bound by Congressional usage—I do not say Parliamentary (for of that I know very little)—to advocate this measure because I had the honor to be a member of the committee which reported it. I am not the counsel for the bill, but one of the judges who are to determine on its merits or faults—on the advantages or evils attending its adoption. In order to perform the task with propriety, we must inquire—

First. What are the evils of the present state of things which it is intended to remove?

Secondly. Does this bill apply a complete remedy to the evil, or, if not complete, is it the best that circumstances permit us to apply?

To determine what are the defects in the present state of the judiciary system, it will be necessary to inquire whether, in every part of the Union, the objects for which it was instituted are carried into effect. These objects were:

1. To secure the execution of the laws and treaties of the United States. The Convention wisely thought that, if the tribunals of the different States were alone relied on for this end, not only would the provisions of these laws and treaties, under various pretences, be evaded, and remain unexecuted, in many instances, but that, when effect was given to them, there would be as many different constructions as there were States in the Union; the law would remain a dead letter, and the country be involved in disputes with foreign nations, for misconstruction or the non-execution of treaties.

2. To give to Ambassadors and other foreign Ministers that prompt relief, for any infraction of their privileges, which is required to secure the free intercourse between nations.

3. To give uniformity to the decision of all questions of international law, and to punish offences against it.

4. To provide a proper tribunal for the decision of all questions arising under the admiralty jurisdiction.

5. To guard the rights of the United States against State prejudices, in the decision of cases in which those rights come in conflict with the interests of a State, or of its citizens.

6. To secure aliens, and citizens of other States, against the operation of unjust laws, or illegal constructions of them. This important object must have been impressed on the minds of the Convention, by the just complaints of Great Britain, for injustice to her subjects, by confiscation and tender laws, and other impediments to the execution of the treaty of peace, as well as by the operation of some of those laws on the citizens of other States.

7. The remaining objects to be effected by

the establishment of a Federal Judiciary, which occur to me, were the punishment of all offences against the laws of the United States, and the collection of its revenue.

This enumeration may appear inapplicable to the subject, or useless, to those who must have a perfect recollection of the objects for which the Federal Judiciary was established, and the reasons on which it was founded; but it was necessary to detail to the committee all these objects; to desire the members to supply, by their more perfect knowledge of the subject, any omission I may have made; and then to ask them, whether, of all these functions of the Federal Judiciary, there is one that has for its object any advantage to the State in which it is to be exercised? Whether, on the contrary, they are not all either of a general nature, for the benefit of the Union collectively, or restrictions of State rights, and intended to protect the General Government against State encroachments; to give execution to its laws and treaties; to force the State and its citizens to do justice to the alien and the inhabitants of other States; and to make the local laws bend to the dictates of justice, whenever they contravened the rights of such parties? Should this be the result of the investigation—should it be found that all the advantages proposed by this branch of our Government, and consequently all those to be expected from its extension, are on the side of the States collectively, and their citizens; that no one exclusive benefit is to be derived to the State within which it is established—what must be the conclusion? That the States who ask for the extension of the system, can have no improper or selfish views in making the demand; that, if any other be imputed to them, or charged as resulting from the measure they advocate, it should be clearly proved. In order to carry these great objects of the Federal Judiciary into effect, the First Congress, in which were many of the framers of the constitution, passed the act of 1789, by which the circuit system was adopted, nearly in the form in which it now exists, but on the principle of complete extension to every State in the Union. Maine and Kentucky have been mentioned as exceptions; but they form none. They were then, respectively, portions of Massachusetts and of Virginia, desirous of being considered separate Governments, but not acknowledged as such by the States of which they originally formed parts. Hence, Circuit Courts could not be established in them, without, in some sort, acknowledging them to be States, which would have injured the interests and pride, perhaps the rights, of Virginia and Massachusetts. Nor could they be subjected to the jurisdiction of the circuits in those States, without deciding the questions pending between them and their parent States. A middle course was pursued. They were erected into separate districts, and District Courts, with circuit powers, were given them. The same course was pursued with respect to

the Territories; and when, in process of time, they came to be States, the system was not changed with respect to any of them, except Tennessee, Kentucky, and Ohio, for whom a new circuit was made, and an additional Judge of the Supreme Court appointed. The other six Western States, as they successively assumed their places in the Union, did not, in the infancy of their political existence, press to be placed on a footing, in this respect, with the other States. The first moments of a State are generally devoted to the interesting task of internal organization. The energies and talents of the new State are directed to matters of immediate interest, and it is, therefore, not astonishing that this anomaly should not earlier have attracted attention. Nor can the neglect be considered as a reproach, far less urged as an abandonment of the right. The time, however, has at length arrived, when the six States, in which District Courts only are now established, demand that they should be placed on an equality with the other members of the Union, and the three other Western States desire such a modification of the system as will enable the Judges of the Circuit Court to despatch the accumulation of business which obstructs the administration of justice. Why do the six new States require this? In the answer to this question will be found the statement of the first point of our inquiry—the evils to be remedied by this bill. Why do we desire to be placed on a footing with the other States? We desire it, sir, because we are States! entitled to equality! the most perfect equality with the oldest, the most populous, the most influential, the best represented State among the first thirteen of the Union! Rights, privileges, honors, burthens, duties, every thing, by the structure of our Government, must be participated by every member of it, on the broadest principle of equality. I would not, coming as I do from one of the smallest States, in point of population—I could not, without betraying its honor and dignity—receive, in its behalf, even an exemption from any duty, however burthensome, if borne by the other States, if it were conceded as a badge of inferiority; I should be disavowed by those who sent me, and justly disavowed. They ask no exemptions; but they demand! yes, sir, that is the word—they demand an equality of rights. Inattentive to this right when it was not disputed, they are feelingly alive to it when their claim is contested; and, in their behalf, I say with Hotspur, for a disputed right, "*I will (do ye mark me) cavil on the ninth part of a hair.*"

But, again, why do we desire the establishment of a circuit, instead of a District Court? What advantage is to be derived from it? I answer, the first effect will be uniformity. But what are the advantages, says the gentleman from Virginia, (Mr. POWELL,) of uniformity? We desire it, simply because it is uniformity. If the circuit system be an advantage to the

States in which it is established, it ought to be extended to us: for we are entitled to every political advantage resulting from the Union which they enjoy. If it be, on the contrary, a burthen, it is one of which we ought to support our share. If the system be good, extend it; if it be bad, abolish it; and give us one that shall be equal in its operation. We cannot extricate ourselves from this dilemma, while we acknowledge what nobody has yet ventured to deny, in words—the perfect equality of political rights, in the several States. Uniformity, says the same honorable member, can only, on this subject, be desired as a matter of State pride and State feeling. Yes, sir, it is a question of pride and feeling—of honest pride, and dignified feeling—a pride that ennobles; a feeling that will not permit us to suffer wrong; and which, when we disregard, we lose the best characteristics of freemen. If this bill had no one object of profit, convenience, or utility, in the ordinary acceptation of those terms—if its only end were to place us on an equality with the other States, in a circumstance the most insignificant; if the right to it were denied, I should contend for that right with the same pertinacity. Sir, the privilege of being covered during the debates of this House, is one which, of all others, I hold to be the most worthless; it is one of which I do not frequently avail myself, and which, if it were not sanctioned by such high authority, I should think somewhat indecorous; yet, sir, make a discrimination in this paltry privilege—declare that none but the representatives from the Atlantic States shall be covered; but that those from beyond the mountains shall enter bareheaded—do this, I will not ask how long we shall stay here—how many hats will be seen in this hall—but how many heads will be found to wear them? No, sir, pride, founded on a sense of dignity; feeling, originating in a sense of wrong, ought to be cherished in Governments, as in individuals: lose them, and patriotism is at an end, and the motive to glorious actions is destroyed: for the pure virtue that does not need their aid, has either never appeared upon earth, or is lost in the degeneracy of modern times. Direct them to proper objects, but do not reduce or endeavor to annihilate them. But is this a matter of mere pride? Important as its gratification is, when properly directed—is that the object? There are real disadvantages attending the present state of things, independent of the injury to pride of opinion, or to wounded feelings of dignity. There is risk of fortune, of life, of reputation, to the inhabitants of six of the Western States, which is not incurred by those of the others. We have seen to what objects the powers of the Federal Judiciary extend; that all suits in which an alien or a citizen of other States is plaintiff, comes within its scope, and that accusations for crimes against the United States, are to be decided there. Under these two heads, every judicial

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question that can affect property, life, liberty, or reputation, may be comprehended.

Now, I ask gentlemen, said Mr. L., who oppose this bill, to give a deliberate answer. If they deign to give any, I am sure it will be a candid one, to this question: whether a defendant, who has these all-important concerns depending on the decision of a single District Judge—not always a man of high legal talents, (for your paltry salaries will not command them,) without the fear of any revision of his sentence, and remote from any superintending control—whether a defendant so circumstanced, can be said to enjoy equal rights with him who cannot suffer either punishment or loss of property, unless the decision of his District Judge is concurred in by a man, selected from among the highest talents, and distinguished for his integrity and learning, and who, in every case of a doubtful nature, even when they concur, may, by a *pro forma* dissent, have the benefit of a recurrence to the assembled wisdom and justice of the Supreme Court? Are these two parties on the same footing? Can it be said, with the semblance of reason, that they enjoy the same rights? And can it be said that a State, all of whose citizens are subjected to these disadvantages, is placed on an equal footing with other States, whose inhabitants enjoy the privileges I have enumerated? If it cannot, the question is at an end: for the terms of our admission are express. Each of the new States is declared “to be one of the United States, and admitted into the Union on an *equal footing* with the original States, in all *respects whatever*.” Now, sir, how is this stipulation fulfilled, if the property, lives, and liberty of *our* citizens, are subject to the will of a single man, while yours can suffer in neither, without the revision of a wise and enlightened tribunal? But we have an appeal from the decision of the District Judge, therefore we have no right to complain! Error, sir! palpable error in fact, as well as fallacy in argument! This right of appeal is limited in cases of property, to those above two thousand dollars in value. But in many instances, the whole fortune of an individual does not exceed that sum. In criminal cases there is no appeal. It is not only property that is concerned, but liberty and life. Both may depend on the construction of law. No innocence can protect a man from accusation. All are liable to be dragged before a court. My life may depend on a correct or false interpretation of a statute of the United States. It is submitted to a District Judge. He decides incorrectly against me, and my life is lost. There is no appeal from his decision, although he may be the man the least qualified, in the district, to pronounce. What would happen, if the case were tried in a Circuit, not in a District Court? First: the concurrence of a Judge of the Supreme Court, in the opinion of the District Judge, would be necessary. Secondly: if they did concur, if the case were one

of first impression, a *pro forma* dissent would be entered, and final judgment could not be passed, until the question had been solemnly debated, and the sentence had received the sanction of the Supreme Court. Now, I again ask gentlemen to say, whether this is no disadvantage? Let them meet this question fairly, and either give a satisfactory answer, or agree to remove the evil by according to us a uniform administration of justice.

A third disadvantage of the want of this extension, is that arising from the knowledge of our laws being less accurate, on the bench of the Supreme Court, than it would be, did one of the judges hold a circuit in the State. I do not enlarge on this head: it has been sufficiently enforced by gentlemen who have preceded me. But I am bound in candor to allow, that if the Judicial system was now to be first established, I do not think this advantage would induce me to prefer the circuit system to that of a stationary appellate court. But it is unnecessary now to balance the advantages of the two systems, because the present courts cannot be abolished without counteracting public opinion; because no such proposition is before the House; and because, however favorably I may think of the system, I am bound to yield to the decided opinion that now exists against it. The sole question now is, Shall we extend the circuit system unto the States that are deprived of it? And on this question there can be no doubt that the measure would bring to the bench of the Supreme Court, a more perfect knowledge of the laws necessary for the decision of questions, in the State I represent, than the judges can now possibly possess. It has been governed successively by the French and Spanish law, and although it has now a written civil code, and one that in time may be extended to commercial and penal cases, yet cases arising before the adoption of those codes, must be decided by the prior laws, and the knowledge of them would undoubtedly be facilitated by the appointment of a person versed in them, to the Supreme Court bench.

The weight of public opinion against the restriction imposed on the Western States, is also a disadvantage attending the present system, which it is desirable to remove. It is powerful, and wherever not unreasonable, must have its effect. Originating in well-founded complaints of the system, it attaches itself at last to the court; its decisions become suspected of partiality; political views are imputed to it; and the most unfounded suspicions are fostered and propagated by the ignorant or designing. Public opinion must, therefore, be consulted. Not, I pray to be understood, in the decision of causes, but in the constitution of courts; and, in proportion as this is consulted, in the formation of any system, will be its efficacy in the administration of justice, and the preservation of union and peace.

Another evil is peculiar to the States of



Kentucky, Ohio, and Tennessee—the only three States to which the system has been extended. The press of business, it appears, is so great in those districts, that one circuit judge cannot get through it. This is not denied; but the remedy offered by the opposers of the bill, is a circuit judge, having no seat on the bench of the Supreme Court. To the other six States they offer nothing; or, if nothing else will satisfy, we shall have a commissioner too: for, call him what you will, he is nothing else. The advocates of the bill ask, whether this is wise legislation? whether it is just? whether it is uniform? and gives equal rights to all the States?

This offer supposes some change necessary: it acknowledges the existence of an evil; others have been shown to exist in all the new States. The next question is, Does the present bill apply a remedy to those which have been enumerated? In my opinion, it offers a complete one to all. It gives uniformity; heals the wounds that have been offered to the rights, to the honest pride and feelings of our sister States; it satisfies public opinion, destroys prejudices, and removes the obstructions to the administration of justice. Is it the best remedy? The best, in my opinion, that can now be applied. I have already hinted my preference for another system; if this were not now established, or could not, with convenience, admit of extension, it may hereafter be necessary to recur to it, but now I do not think it is. The objections that have been urged against it, come next to be considered. I shall do this very briefly, for they have more than once been already brought under the consideration of the committee.

The most prominent is, that a court consisting of ten judges will be too numerous. This has always been urged, as if the mere statement of the fact were sufficient to enforce the objection; but it would have been more convincing, if some reasons had been stated to show why a bench thus composed would be less competent to the administration of justice than one consisting of half the number. The final decision of a cause on an appeal, is made on a cool consideration of the facts contained in the record, and the law applicable to them. Whether the judges be many or few, the arguments at the bar are the same; each of the ten justices hears and considers them at the same time; and each forms his own opinion of the fact and the law; which is corrected or confirmed by a free communication with his brethren, when they meet. This is done in private; there are no long speeches—no warm debate—no pride of opinion to be supported in the presence of a numerous audience. The publicity is as it ought to be in the result. The operation by which it has been produced, is carried on in the calm retirement of the cabinet; and so far from considering the number as an evil, I regard it as one of the best features of the bill. If all the tribunals, whose

decisions are to be revised, were governed by the same laws, a less numerous court of appeals might answer the purpose: but when we consider the questions arising on the civil law, and the local laws of France and Spain, in the five States and the two Territories, that were once wholly or in part governed by those codes; when we consider the vast variety of modifications which have been made by the statutes of the other States, whose jurisprudence is based on that of England; we can scarcely fail to arrive at the conclusion, that such a knowledge of this heterogeneous mass as will be necessary to correct the fallacies of ingenious counsel in expounding it, will be much more probably found divided among ten men of learning and experience, taken, as for this purpose they undoubtedly will be, from different parts of the Union, than united in five men of the same description. The instances which have been cited of small judiciary bodies in England, and in the different States, afford no applicable examples; because the law is the same throughout each State, and reasons of economy may have, in many instances, operated to reduce the number; but that practice is not uniform, and I need not repeat the exceptions, which have been shown in the debate. There is, however, a striking one, which has not been adverted to; and yet it comes under our daily observation: an instance in which questions of fact, intricate points of law, combined in every mode that can make them difficult of solution, land titles, contracts, descents founded on law, on equity, on usage, are heard and decided by more than two hundred judges: are, sir, and decided in our opinion so wisely, that we will never permit them to be sent to the tribunal of seven. To all those who have constantly refused this reference, even in the most difficult cases; who have clung to the right of deciding on the justice of private claims in this House; to all such, the proposed augmentation of the Supreme Court can form no objection to the bill. If we believe ten are too numerous to give just decisions, how can we reconcile it to ourselves to sit, as judges in a court of two hundred?

Mr. INGERSOLL observed that, when the debate on this subject opened, it was not his intention to obtrude himself on the indulgence of the committee. Indeed, after the enlightened and expanded views presented to us by the different members of the Judiciary Committee, who reported this bill, he felt as if his friends might fold their arms in security, and wait patiently for the question. The whole ground appeared to be minutely explored, and every avenue guarded by anticipation against attack. But, as we approach the question, the indications around us show, that the passage of the bill will be disputed, inch by inch. New obstacles are thrown across our path: new points are presented; objections of every variety that ingenuity can invent, or eloquence urge, thicken around us. It was with a humble

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hope that he might be able to answer some of these new objections—which could not have been anticipated by the Judiciary Committee—that he had ventured to rise on the present occasion. If, therefore, his remarks should be principally confined, as they certainly would be, to the dull routine of answering objections that had been urged by others, he hoped an apology would be found in the fact, that the leading topics connected with this subject, had been scrutinized, sifted, and disposed of, by abler hands than his.

The gentleman from Virginia, (Mr. POWELL,) who last addressed us in opposition to the bill, had struck out a new path: not only different, but essentially different, from the course of either of his friends who preceded him. And although, said Mr. I., I saw him advance his positions with a delicacy and a talented ingenuity that commanded my admiration, yet I must confess, in the cooler moments of reflection, I found my judgment unconvinced, if not undisturbed. He tells us, in the onset, that but three of the nine States which are intended to be reached by the provisions of this bill, have called upon us in a voice loud enough to demand the interference of Congress; that these three States are Kentucky, Ohio, and Tennessee; while the remaining six have only made known their wants in distant and indistinct "murmurs." And hence an argument is derived, that, if we interfere at all, our aid should be extended to the three States which have thundered their grievances in our ears, whilst the modest murmurs of the remaining six should, for the present, pass us as the idle wind. Sir, if the complaints of the six States alluded to have not been as loud as those of the three States which he designated, they have certainly not been less constant. No, sir, these murmurs are blended in every breeze from the West. And I hope, said Mr. I., that the honorable gentleman from Virginia will excuse me for reminding him, that a skilful pilot will often perceive, in the muttering of a distant cloud, the approaching thunder of a tempest.

The bill before us, said Mr. I., may be regarded, not only as intrinsically important, on account of the conveniences which it will afford the citizens of the new States, in the judicial determination of their rights, but it is doubly important when considered as fixing the policy which is to govern the old thirteen States in regard to the new members of this Union at the West and South. For, disguise this question as you may, it is, after all, nothing more or less than an appeal to the old States from the new States, which have come into the Union since the adoption of the constitution, to participate freely and unshackled in the benefits derived from the judicial branch of the common Government. Gentlemen seem to argue this question as if the extension of the Judiciary System to the new States ought to depend upon the number of cases that were docketed for decision in the District Courts of

those States. But, in the view which I take of this question, it is immaterial whether those States have few or many cases in the Federal Courts. If they have any cases contemplated by the constitution, as proper to be adjudicated by the Federal Courts, they had a right to have the benefits of the system extended to them. As was well observed by the learned jurist from Louisiana, (Mr. LIVINGSTON,) who had just addressed us, there is a pride and a feeling on this subject, applicable to States as well as individuals, which, when based on proper principles, a wise legislator will never lightly regard. If, when the citizens of the West approach the old thirteen, the parent States, and ask—I will not say for favors, but for rights, guaranteed to them by the constitution—you extend to them a grudging hand, you may alienate their attachments to this Union, and lay the foundations for those sectional jealousies, which the Father of his Country warned you to avoid. Sir, it has been said that some of the new States are the children of the General Government, and that they have been so long dandled on the parent knee, that they presume to demand the extension of the Judicial System to them, not as a favor, but as a right. Those States are, indeed, the children, not of this or any other administration, but the children of the original States which formed this Union. But, sir, instead of being favored and caressed by an overweening care, you have given them for their toys the rifle and the bayonet; and the history of the last war tells you, that they learned to use them with effect, and to bring them from the contest with untarnished lustre. These children of the old States have never forgotten the parent stock. When the commercial rights of the United States were invaded—rights, the invasion of which more particularly affected the Atlantic States than those beyond the mountains—the statesmen of the West were among the first to raise their voices in Congress in vindication of the injured honor of the common country; and in a war waged for "free trade and sailors' rights," these children of the West were the first to meet the enemy on the frontiers, and, as we have been eloquently reminded by the honorable gentleman from Louisiana, they were the last to sustain your eagles at New Orleans.

If, however, Mr. Chairman, an extension of the Judiciary System is to depend upon the number of cases that have arisen, or that will arise in the new States, where, it may be asked, will you find so wide a field for judicial labor as in those States? Kentucky, we are told, has six hundred cases annually commenced in the Federal Courts; Ohio has four hundred; Tennessee has now three hundred and twenty suits undecided; and the dockets of the Federal Courts in Indiana, Illinois, and Missouri, are so lumbered up as to call loudly for relief. Does any thing like this mass of business exist in the Atlantic States, where the

Judicial system acts freely and unembarrassed? What, then, is our condition? We have, in the old States, an old and a tried system of administering justice, which has called forth the eulogies of both the friends and the foes of the present bill; and, when we are asked to extend it to the wants of the West, gentlemen pause as if we were legislating for colonies, and not for States equal in sovereignty and equal in rights to the States to which we belong. The honorable gentleman from Virginia, to whom I first alluded, tells us, that he would not extend the Judicial system any farther than it now reaches; because, he says, the evils which now press so heavily on the seventh circuit, are the effects of the existing system; and he warns us not to entail these evils on other portions of the western country. Sir, the embarrassments in the seventh circuit are not the consequences of the Judiciary System, considered as an entire system, but are attributable to other causes. Would you condemn the system which in six out of seven of the circuits, gives, as is admitted on all hands, the most perfect satisfaction, because you find there are evils in a single unwieldy circuit west of the mountains?

Is it correct, is it logical, thus to argue against an entire system, because you can find a single spot that is embarrassed by an accumulation of business? The embarrassments are attributable to the formation of the Western circuit. You have there the three States of Kentucky, Ohio, and Tennessee, thrown into a circuit, when either one of those States produces more causes than an entire circuit on the Atlantic border. It is to remedy this very difficulty that the present bill is, in part, intended. The honorable gentleman says, that he would appoint an additional circuit judge for the new States, but not permit him to take a seat on the bench of the Supreme Court, at Washington; and yet, in the same breath, he informs us that he is, in principle, opposed to a circuit system, unconnected with supreme duties. He would raise a rampart around the present Judicial system of the old thirteen States; he would vote down the system of 1801, if it now existed; and he would have done the same had he been a member of the Congress of 1802. Where, then, does his reasoning bring us? I ask him in candor to say, if he would have us hold on to the present system in the Atlantic States, as the best that can be devised, and, at the same time, offer to the States which have recently come into the Union, a circuit system, which we have once discarded as unfit for ourselves?

THURSDAY, January 19.

*Navy Timber, &c.*

Mr. HOLOMBE offered the following resolution:

*Resolved*, That the Secretary of the Navy be directed to furnish this House with estimates of the

probable cost of the following lots of live oak timber, to be distributed in the several navy yards of the United States; together with the cost of erecting permanent sheds for their preservation.

Six Frames of Steam Batteries,  
Twelve do. of Ships of the Line,  
Fifteen do. of Frigates of the largest class,  
Fifteen do. of Sloops of War.

*And Resolved*, That the Secretary of the Navy be also directed to report to this House, what further legislation, if any, is necessary for the more effectual preservation of the live oak, and red cedar timber on the Public Lands of the United States.

This resolution lies on the table one day.

#### *Judiciary Bill.*

On motion of Mr. WEBSTER, the House again went into Committee of the Whole, Mr. TOMLINSON in the chair, on the bill "further to amend the Judicial system of the United States;" and the question being on the motion offered by Mr. STORRE, for amending the bill so as to appoint nine judges instead of ten—

Mr. WRIGHT rose, and said, that he was very conscious there would be some difficulty, at so late a period in the discussion of this bill, both in obtaining and in holding the attention of the committee to any remarks he might have to offer—nor could he even hope, although rising chiefly with a view of communicating information in relation to the state of facts, to be listened to with any very lively interest. Still, however, his sense of duty to one of the greatest States of the West, which he had the honor, in part, to represent, and which had a peculiar interest in the question, impelled him, under whatever disadvantages, to endeavor to present to the committee his views in opposition to the amendment which was yesterday proposed by the gentleman from New York, directly impairing that interest. In doing this, it would be necessary for him, in the first place, to inquire whether there does exist any important inconveniences in the administration of the laws of the United States, in any part of this Union, which calls for the intervention of Congress; and, in the next place, if such inconveniences do exist, whether the propositions contained in the bill upon the table, are calculated to remove them; and to provide for extending the privileges and facilities enjoyed in one section of the country to those parts of it which are now, and have for a long time been, deprived of them.

It is now, said Mr. W., more than ten years since the attention of Congress was called to this subject by President Madison—it was at that time the opinion not only of that distinguished officer, but of other gentlemen of great intelligence, that the then existing organization of our judicial tribunals was not adapted to the wants and extent of the country. A revision of it was recommended by a succeeding President: it was recommended by the Legislatures of several of the States: it was recommended by the bars of several States, and by

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various individuals in different parts of the Union. All these recommendations concurred in calling the attention of the National Legislature to this subject.

But, sir, independently of these considerations, supposing none of these evils to have existence at all, the people of the Western States, by the constitution, have a *right*, yes, sir, a right, to *demand* that all the privileges and immunities extended to any other State, or to any other citizen, shall be extended equally to them. They enjoy this right not only by an express clause in the constitution to that effect—"the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States"—but by the provision for admitting new States into the Union. They can only be admitted as sovereign States. All the powers of sovereignty pertain to them in a degree as unlimited as to any of the original States of the Confederacy. Dependent on this constitutional right, they have another—that of having a voice in a judicial tribunal of the last resort, where the most important questions of State and Federal laws, and of the constitution, are decided, and their construction settled: to carry there, clothed with power, their views in relation to their own legislation and yours, and to procure, as far as practicable, a correct construction of all. This may be called a mere matter of pride: be it so—they have a right to this constitutional participation, and they claim it as a matter of pride. It is a feeling of just and honorable pride, which urges them to assert this right before you: a feeling which will forever prevent the people of the West from voluntarily submitting to degradation.

Mr. Chairman, I think I have shown that evils do exist in the Western States, in relation to the administration of justice, and that they are such as to require a remedy at your hands. The next question that occurs, is, are they temporary, or are they permanent in their character? I do not know that I can better answer this question, than by presenting to the committee a view of the existing state of things in the State I have, in part, the honor to represent.

It is known to you, sir, and to all the members of this committee, that the land which constitutes that State, was originally owned by other States, or the inhabitants of other States; and, in consequence of this circumstance, is subject to the action of the Federal Court jurisdiction. On the northern boundary of the State, a large tract, equal in size to the State of Connecticut, familiarly known as the Connecticut Reserve, was formerly the property of that State, and has been mostly granted out by it to various individuals, principally non-residents. This is, of course, subjected to the action of the Federal jurisdiction. On the west of this lies another large tract, granted out to certain sufferers by fire. South of this is another tract appropriated as bounty land to the officers and soldiers of the Revolutionary

war. Another to the refugees from Canada and Nova Scotia. Another, larger tract, and much more fruitful of litigation than either of those I have mentioned, is that extending between the Miami and Scioto rivers, reserved by Virginia for her Revolutionary officers and soldiers. Besides all these, there is a grant to the Ohio Company; the grant to Symmes's Company; and smaller grants to various other land companies, connected with the early sales of public lands at New York and Pittsburg; the whole of which are, from the circumstances of the case, subject to the jurisdiction of the United States Courts. The right in the soil in the Territories over which the sovereignty of Ohio stretches, not being in the State, but in the General Government, and the States and individuals before adverted to, the whole of the soil has been subjected to the controlling legislation of the Union, and been parcelled out by the United States.

If it be true, then, as contended, and has been decided, that the judicial power in this Government is co-existent and co-extensive with the legislative power, all questions relating to the land grants in Ohio are subject to the action of Federal jurisdiction. These circumstances, peculiar to the Western States, and applicable to all of them, except Kentucky and Tennessee, to all whose soil is owned by the United States, or other States, afford abundant reason for the great increase of business in the Federal Courts in the Western States, and why that business must always be great. These reasons do not apply to the States east of the Alleghany Ridge, because in those States the right of soil and jurisdiction is united. The great influx of aliens into the country, a great proportion of whom seat themselves in the West, furnishes an additional reason for increased business in the Federal Courts; because it is the constitutional right of aliens to claim the aid of the United States Courts in all their litigation with citizens. Another source, and a most fertile source, of litigation, common to all new countries, with a new and sparse population, suddenly thrown together from different countries and States, bringing their own peculiar moral and legal notions, discordant, possessing little capacity for harmonious action, will be found in the loose, careless, and oftentimes ignorant method of transacting judicial or other proceedings, when there are no precedents to guide, nor any settled rules of decision. In such cases, the entries and records, if any are kept, are often found so totally defective as to afford no satisfactory evidence of what has been done, and those questions supposed to be settled, are bought up for re-examination and adjudication. Another source of increased litigation in the Federal Courts of the West, which has been adverted to by the gentleman from Illinois, (Mr. Coox,) will be found, in its interior situation, cut off from direct foreign commercial intercourse, destitute of importers among themselves, and constrained to multiply their

engagements with citizens of other States. Need I go further? Have I not sufficiently shown the causes of the accumulation of business? Are these causes permanent, or only temporary? I think, sir, I can show that, if they are not *entirely* permanent, they may be regarded as *nearly* so. The great region of the West is only now beginning to develop itself; its population, great as it is, is still thinly scattered, and actually covers but a small portion of its territory. Of the 15,288,082 acres of land in Ohio alone, surveyed for sale by the United States, 7,680,888 now remain unsold. This country has settled and improved with a rapidity that has astonished every one, and its increase at this time is equal to what it has been at any former period. The land litigation we have seen is permanent; the increase of population will naturally multiply contracts and other subjects of litigation, and will make that class of cases permanent also.

I will proceed, sir, to submit, as immediately connected with this subject, a few considerations relative to the existing state of the Seventh Circuit. That circuit comprises the States of Tennessee, Kentucky, and Ohio. There are now annually commenced in its court, seventeen hundred suits, and the information from gentlemen here, and memorials, advise you they are constantly increasing. The judge assigned to that circuit, has to travel twelve hundred miles in the performance of his circuit duties, and fourteen hundred miles to attend the Supreme Court. Has any other of your judges to perform labor like this? Has any judge, in any country, equal labor to perform? I may safely answer in the negative. This alone will satisfy you, that, from the vast labor required of the judge, it is impossible to remedy the evils complained of in the West, while this circuit retains its present organization. When the circuit was established in 1807, the number of inhabitants comprised within it was about 742,000. In 1820, its population had increased to 1,568,584. A census of free white males has recently been taken in Ohio, and calculating from the data it furnishes, I feel warranted in assuring the committee, the population of that single State now falls little, if any, short of a million. If this fact furnishes any rule by which to estimate the increase of the other two States, the present population of the Seventh Circuit exceeds two millions and a half. In 1807, Ohio, which now has a million of inhabitants, had but one representative on this floor; she now has fourteen. Is it not apparent, then, whether you regard population, extent of territory, or the quantum of litigation, that no one judge is adequate to go through with the judicial duties of this circuit? If Congress, in forming this circuit in 1807, performed its duty faithfully, by adapting it to the then existing wants of its people—if, when the population was less than one-third that it now is, this court was deemed necessary—if its legislation was suited to these three States then, it cannot be adapted to their situation now. Any ar-

range requiring *one* judge to perform all the circuit duties of either two of the three States now composing the Seventh Circuit, would fail to afford the desired remedy. No single judge would be able to perform these duties: if, therefore, Kentucky and Ohio are to remain united in the same circuit, the remedy would not be efficacious. As it regarded Ohio, the remedy would be worse than useless—it would hold out to her a pretence of relief, which we knew was unsubstantial—a mere shadow. The memorial from Ohio informs you, the District Judge is unable to attend regularly to business, on account of indisposition, already protracted, and which indicated a long continuance. The Circuit Judge, whose fine constitution has been ruined and broken by the severe labor you have imposed upon him, is in as bad, or even worse, situation—wholly unable to attend the court. The bill proposes to separate these three great States of the West, and to unite with each, one or more, of less population and business. It is predicated on the only correct principle, and is well fitted in its convenient arrangement of circuits, to facilitate the administration of justice. I much fear, sir, no advantage whatever would result to either of these States, from a different arrangement of the circuits, or from any one, predicated on the addition of *only* two judges to the present number. When gentlemen advert to the vast amount of business in the West, and the prospect of its increase, will they not be satisfied, that if we keep either two of these large States together, we shall frustrate the design of the bill?

I am met here, sir, by the declaration of the Chairman of the Judiciary Committee—a declaration of most extraordinary character—that the three small States lying in the northwestern angle of the Union, (Indiana, Illinois, and Missouri,) might get along as they are, a little while longer, and take a circuit, with a judge of the Supreme Court by and by! What is the situation of those States? Is there no business, there, for the United States Courts? We have seen there is, and that the present system operates, as to them, a denial of justice. Why call on these States for longer forbearance, while you extend the system to other States? We *now* know their wants, and why not *now* apply the remedy? If it be important to extend the judicial system into any of the Western States, it is equally important to extend it to the whole. One State has the same right to participate in these privileges as another. The bill provides for the wants of all; and let me ask, on what grounds the three States in the northwest should be excluded? Is it wise to adapt our legislation to the wants of this day only, and to invite the attention of every new Congress to the subject? I think not. The less frequently this subject is brought before Congress the less probable is it that any alarm will be excited throughout the country, as to the stability of our judicial system. What extraordinary claims have Mississippi and Alabama, that they should

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enjoy the advantages of the system, while Indiana, Illinois, and Missouri, are excluded? Have the first-named States the greater amount of business? I have taken some pains to collect information, and feel warranted in saying, the largest amount of business is found in the north-western States. The information I possess, derived from memorials and conversations with gentlemen here, and letters, show about 40 causes a year in Indiana; 80 in Illinois; 60 in Alabama; and 40 in Mississippi. We may collect from this information, although it may not be precisely correct, that there is a remarkable equality, as to business, amongst these four States; and when we advert to the memorial so long ago presented from the Legislature of Indiana, and the statements of the gentleman from Illinois, on this floor, we shall be satisfied, if the claim of either is to be *preferred*, it is that of the northwestern States: but, sir, they are all equally entitled to the benefit of the system now.

An examination of the business in the different circuits, will show how greatly the amount in the Western, exceeds that in the Eastern circuits, and how much more labor the western judges have to perform, and gentlemen will see that it is impossible to impose any new duties on the western judges, if you expect them to be performed. No number less than three will be adequate to do the immense labor of the western circuits.

Sir, what was the situation of the United States in 1789, when the judiciary was first organized under the new constitution? There were then only ten States in the Union—Vermont, Rhode Island, and North Carolina, were not then in. The population of these ten States, at that time, did not exceed three millions; but if we admit that, in adopting the system, the union of these three States was anticipated, and was taken into view, the whole population did not exceed four millions. Six judges were then thought necessary to administer justice to these four millions of people in thirteen States, and they were provided for in that act. Rhode Island and North Carolina, having ratified the constitution, had this judicial system extended to them in June, 1790. Vermont had it extended to her in March, 1791. It is a little extraordinary that gentlemen from two of the three States, who were not present at the wedding, but coming at the eleventh hour, were admitted to a full share of the feast, should be among the first to raise their voices against the extension to other States of that system, which had been so promptly and generously extended to them. Surely the gentleman from Rhode Island—a State, where, he believed, the majority in favor of ratifying the constitution was not very great—should not have been so tenacious of excluding her younger sisters from enjoying the privileges it conferred, or to claim to exclude from the judicial pale these forward children of the West, to let the old thirteen States enjoy their pittance.

In 1807, when the Seventh Circuit was or-

ganized, embracing the then three Western States, the population of the country bore a greater disproportion to the number of judges, than in 1789. At the time the seventh judge was added to the Supreme Court, there were about six and a half millions of inhabitants in the Union. Seven judges for six and a half millions, was not equal to six for three, or at most four millions. We have now upwards of twelve millions of people, and we propose to add to the court three new judges, and to make the court consist of ten. I ask, again, if ten judges is a greater number for twelve millions, than six was for four millions, or ten for twenty-four States, more than six was for thirteen? The ratio adopted in 1789, would give eighteen judges now. Yet we are told this trifling extension of the existing system is pressing it beyond its limits, and will produce distraction, instability, and ruin.

When this system was first adopted, and the United States judges were sent into the States, they were looked upon with great jealousy, and all their acts were closely scrutinized by the people. Satisfaction has taken the place of jealousy and distrust, and we are told, the whole people of the States east of the Alleghany ridge, are perfectly satisfied with the court and its decisions. If such beneficial results have followed the sending your judges into the fourteen Atlantic States, why will you still exclude the Western States from participation in these results, and keep them ignorant of the operation of your laws? Why have you afforded your aid to quiet the alarms, and remove the jealousies of the people in the Atlantic States, and refuse to dissipate the fears and disquietudes, said to be so prevalent in the West? If all that had been said against the West were true, that would furnish additional arguments for sending judges to put things right. But the fear is not, that the new judges will injure the West, but that the discontents of the West will injure the new judges, and through them, the old ones. I deny that there is any thing in the habits or temper of the western people, to justify any alarm, and I call on gentlemen who throw out such aspersions, for their proof.

The gentleman from New York (Mr. STORRS) thinks we had better take only two steps *now*, and *wait a little* before we take a third—to appoint two judges now, and another by and by, than, by appointing all three at once, alarm the fears of gentlemen. He seems to admit, the time is rapidly approaching when you cannot avoid taking the third step. If three judges are necessary, why not have them at once? Is it wise to forbear now, and agitate the subject anew, year after year, to quiet the fears some gentlemen have? I see no reason for this timidity. It is said, the Territories will shortly become States, and then you can provide for the third judge. In 1789, the real wants of the people did not require six judges, but it was then thought wise to provide six, to answer the increased population of the States on the Atlantic,

and it has been found to answer from that day to this. Why shall we reject this example? Why pass a law so narrow in its operation as to require immediate revision and re-enactment? It is your duty to give some character for permanence to your legislation, as well as your adjudications. The act of 1789 was found to answer its object till 1807—eighteen years—and by adding one judge at that time, and extending its system over the then three Western States, has been continued to the present period—nineteen years longer. With these examples and this policy before us, shall we limit our views in legislation to the present moment, and shut our eyes upon the future? We are told that by increasing the number of judges to ten, you incorporate into the judicial system principles tending to its total destruction—that new judges must be added, from time to time, as new States arise, until you make it too numerous a body for business, and weaken, if not take from it entirely, its responsibility. There is little expectation that any other States, than the present organized Territories, will claim admission into this Union for fifty years, and these Territories, when States, can conveniently be attached to the proposed circuits—Michigan to the Ohio circuit; Florida to that of Alabama, and Arkansas to that of Louisiana. We may, therefore, fairly presume, the circuits now proposed, will answer all the purposes of justice for fifty years.

Sir, what are these fears of gentlemen, and what the cause of alarm at the proposed increase of judges? It seems not denied that there is not, either in the number seven or nine, any magic charm; and we have found, from experience, that no serious inconvenience results from an even number in the court. But gentlemen tell us, the representative principle is carried into the scheme—that the addition of three judges will make the court a political, popularity-hunting tribunal—that the judges coming from the West, and mixing with the people of the West, will imbibe their *feelings of hostility* to the court, and, to the Atlantic country, their *factions principles*, their *corruption*; and, armed with these weapons, will corrupt the court, overturn its previous decisions, and control its future ones—destructive alike of good order, uniformity of decision, and the principles of the constitution. Are not all these apprehensions gratuitous? Does the character of the court of the Western country, or the Western people, furnish any foundation for them? The gentleman from Rhode Island (Mr. PEARCE) had said, the people of the West are to bring on to the bench of the Supreme Court all their feelings of hostility to the court and its decisions.

The feeling to which I have before adverted, that existed there in relation to a decision of the Supreme Court, was not sufficient to justify any apprehension. This kind of feeling has not been confined to the Western States. Other States have felt it to as great an extent. It had existed in Georgia, South Carolina, Virginia,

Pennsylvania, New York, New Hampshire, and Vermont. Georgia and South Carolina submitted with reluctance. Virginia exerted her judicial power to resist. Pennsylvania raised her military arm. Yet we of the West are not found charging the people of these States with being factious, and turbulent, and corrupt. The feeling subsided without generating the passions so ungenerously attributed to the West. Has the Western atmosphere any thing peculiar in it to excite turbulence and faction? Although supposed to possess this taint, gentlemen have showered compliments upon the Western people in great abundance. We are generous and brave, ready to rush into danger, and to repel our country's foes. We are entitled to thanks and confidence, a seat on this floor, and to any thing but a Judge on the Supreme Court bench, or to have a Judge from the Supreme Court sent to us to try our causes. I have no inclination to find fault with the judges, nor disposed to flatter them. It is not congenial to my disposition to do either. They have performed their duties to the satisfaction of the people, and need no praise. Yet these judges, so highly gifted and extolled, exalted so as to be but little lower than the angels, are to surrender their opinions to the three Western judges. The one now in the West having been admitted to have performed his duties satisfactorily, is not obnoxious to the charge. These three new judges are to reverse all the decisions of the Supreme Court. They must be wonderful men, if the three can control and overrule seven. If the argument was predicated on the opinion that the Atlantic judges would neglect their duties in the Supreme Court, and leave the seats for the Western judges, a moment's reflection would show to the contrary. The bad roads, increased distances, and other inconveniences, from which the Eastern judges will be exempt, will retard the Western judge in his arrival, and give those from the East the advantage.

The gentleman from Rhode Island (Mr. PEARCE) has expressed his fears also, that, if new judges are appointed from the West, some of the decisions of the court, which had given so much satisfaction to the Atlantic States, would be reversed: among those enumerated, was one as to the conclusive character of a record of a foreign court of Admiralty, (in accordance with which, he thinks, there was but a bare majority of the court,)—one as to the liability of individual members of a corporation in the Circuit Court, when any one of them lived within the State or district; another denying to that court jurisdiction at common law in criminal cases, in opposition to what he conceives the conclusive argument of Judge Story; and another sustaining the constitutionality of the law imposing circuit duties on the Judges of the Supreme Court. Let me quiet the gentleman's fears in these respects, and assure him there is no danger from our quarter, in relation to either of his cases. In the West, the first decision is not regarded as of much consequence

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either way: with the second, no dissatisfaction is felt. For myself, I had supposed it indisputable, that one individual, enjoying a personal privilege, could not extend that privilege so as to include or protect others associated with him in contract or tort. As to common law criminal jurisdiction of crimes in the United States, the Western lawyers are only astonished it should have entered into the mind of any man to conceive that court had such jurisdiction. The question as to the constitutional authority of the court, never has been raised in all the litigation in the West, or elsewhere, except in the case alluded to by Judge Parsons. I hazard nothing in asserting, that such a question will not be raised in the West; and if such were raised, the decision there would accord with that of the Supreme Court. The gentleman says, that the common law and constitutional questions were decided *wrong*. Yet he is much alarmed lest Western judges should reverse them, and decide *right*. Does the gentleman think it is *wrong* for Western judges to do *right*? How are decisions to be reversed? The judges are not to overturn them without a cause. When a case is properly made and presented, and fully argued, is your Supreme Court to be deprived of the power to decide as they think right, through fear of disturbing some former decision—a privilege enjoyed by all other courts, existing in the very nature of things? When error is discovered, is it an act of wisdom or integrity to persist in it?

Mr. KREMER said he should vote not only against this amendment, but against the bill also. There was nothing of which he was more fully convinced, than that the whole Judicial system of this country, as it now stands, is radically wrong; and he was satisfied that the bill would not in practice, answer the end proposed by its friends. This end, it is argued, is to prevent the delay of justice. As to the existence of such delays, there could be no question—there was not any man who could doubt the fact. The evil prevails everywhere through the country: but is multiplying courts a likely way to remedy it? So far from it, it will only be multiplying the evil. It is with courts as it is with banks—the moment you begin to create the want of them, you will have to go on to satisfy that want: so in new countries they cry out that the delay they experience is for want of more courts. The argument is specious, but is it solid? I appeal to all, whether, when the number of judges was once before increased, the same evils did not prevail? Besides, where is the evidence that the delay and expense complained of is so very enormous? What are we told by the friends of the bill? That the bar of Tennessee and the bar of Ohio have come forward and petitioned this House; but, Mr. Chairman, the best evidence should be produced, which the case will admit: and is this the best evidence? Is it not admitted as a principle, that the more interest any party has in that, concerning which he testifies, the less is his testi-

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mony worthy to be received? Have we any memorial from the Court? Do the honest suitors come here, and ask you to multiply their evils by increasing the courts? For, what does the present Judicial system amount to? Is it not, in practice, a denial of justice? If you wish to benefit the people, you must remodel the entire system: for, as it is, the suitors have but too much reason to adopt the language of the unfortunate man, who, having succeeded in his cause, after several appeals, said to his friend, "one verdict more in my favor, and I am quite ruined." Notwithstanding all the fine eulogies which have been pronounced on the Judiciary of this country, and the Judiciary of England, the gentleman from Rhode Island (Mr. PRARCK) tells you that a single suit in the Supreme Court, cost 6,500 dollars, when the whole sum in dispute was less than that. We have heard something said, about the excitement which once existed in Pennsylvania, (I conclude gentlemen allude to Olmstead's case,) and they tell us that the people in Pennsylvania are now quiet, and make no resistance. Mr. Chairman, so should I be, if a robber had met me in the Pennsylvania Avenue, and knocked me down: but nothing can ever erase from my memory, or take out of my heart, the conviction of the oppression and injustice which was done in that case: nor will the people of Pennsylvania ever cease to remember and to feel it too. Sir, you can never reconcile them to that decision. But, sir, I must here enter my solemn protest against the whole doctrine, that the Supreme Court has power to pronounce acts of this House to be unconstitutional. In vain did our armies shed their blood in the field, and our sages toil in the cabinet, to secure our liberty, if it is to be subjected to the arbitrary decision of these judges.

We have heard a great deal about the illustrious talents of the Judges of the Supreme Court; and we have been told a great deal about the incorruptible purity of the English courts; but do gentlemen forget the words of the poet?

"Do parts allure thee? Look how BACON shin'd,  
The greatest, wisest, meanest of mankind."

This man was bribed—and about a hundred years after, another of their Chancellors was convicted of enormous crimes. If some judges are corrupt, others may be so too; he believed nothing of the infallibility of men in any station. He again protested against the doctrine that they had power to set aside the acts of this House: and even if he had at first been friendly to the bill, this bold avowal would be sufficient to induce him to pause before he voted for it. He called upon gentlemen to pause before they took a step so important. He would first be well assured that the people wish this change, before he could be persuaded to vote for it.

So the amendment was rejected.

Mr. MERRICK then moved the following resolution:

*Resolved*, That the bill be recommitted to the



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Death of Mr. Farrelly.

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committee that brought it in, with an instruction so to amend it as to discharge the Judges of the Supreme Court from attendance on the Circuit Courts of the United States; to provide for the gradual reduction of their present number to five; and, further, to provide a uniform efficient system for the administration of justice in the inferior courts of the United States.

Mr. VAN RENSSELAER now moved that the House adjourn; which motion was carried—ayes 89; noes 84.

FRIDAY, January 20.

*Navy Timber, &c.*

The resolutions offered yesterday, by Mr. HOLCOMBE, respecting Navy timber, were taken up.

Mr. STORRS (Chairman of the Committee on Naval Affairs) said that he was not aware that the interests of the service called, at this time, for the estimates proposed—that there was nothing in the present state of the country which required the House now to consider the subject. No proposition had been made, to his knowledge, from any quarter, to enlarge the existing naval establishment. It would be in time to examine that subject, when we heard from the Executive Department that it was necessary or expedient to act upon it. The adoption of the first resolution, might lead to inferences altogether unfounded, and actually injurious to the Naval service. He should, therefore, vote against that resolution.

Mr. HOLCOMBE said, that he would briefly explain the reasons which had induced him to submit the resolutions under consideration. From information received from the most respectable sources, he could inform the House that the live-oak timber was rapidly disappearing from the public lands of the United States, and that, unless some decisive measures were speedily adopted for its preservation, the whole supply of this invaluable timber would be entirely cut off in a few years. The law of 1822, Mr. H. said, was totally inoperative; indeed, it was worse than useless. He was assured that more of the live-oak timber had been removed, perhaps thrice as much, in the few years which have followed its enactment than for any same number of years before that period. This was owing, he presumed, to the apprehension of the agents of foreign shipyards, that this law was to be considered as an indication that Congress was determined to preserve its public timber, and hence they had availed themselves of the lax provisions of the existing law, and made every effort to supply themselves abundantly, in anticipation of future wants. And such had been their success in procuring their timber, that he felt warranted in asserting, that there was more good live-oak timber to be found, at this moment, in British shipyards, and in other situations beyond the control of this Government, than was growing on the public lands of the United States, at least in accessible situa-

tions. With such facts before him, Mr. H. thought it was a subject of proper inquiry, whether some more effectual measures than the present should not be adopted to secure the timber left; and whether it would not be prudent to provide for the future exigencies of the service, in the manner proposed in the resolutions. The live-oak, if properly secured, instead of deteriorating, grows better—so he was informed—for any indefinite period. Mr. H. said (and the House, he perfectly knew, was aware of the fact) that the supply of live-oak is limited, and is not, like the white-oak, and ordinary timber, scattered over the Union, but confined to the sea-board region of the Southern States, and the margin of the Gulf of Mexico. With such views, Mr. H. had presented the resolutions, and hoped they would be adopted.

The question was then taken on the first resolution, and carried in the affirmative—ayes 64, noes 60.

The question then being on the second resolution, Mr. STORRS observed that he had no objection to having this information obtained; but he doubted if it was a proper course for this House to call on one of the Heads of Departments to know if legislation is, or is not, necessary on a given subject. It was at all times proper to call on him for facts which were officially within his knowledge; but it was evidently unbecoming for the House of Representatives to ask any Head of Department how they shall perform their duty. He therefore moved to amend the resolution by striking out "the Secretary of the Navy," and inserting, in lieu thereof, "the Committee on Naval Affairs."

The amendment was agreed to, and the resolution, as amended, was then adopted.

*Death of Mr. Farrelly.*

Mr. STEVENSON, of Pennsylvania, rose, and said—

Mr. SPEAKER: I rise to announce the unpleasant information of the death of one of my colleagues, Mr. PATRICK FARRELLY, a gentleman known here from having acted as a member of this House for several years, and who had been again returned as one of the members from Pennsylvania. He died at Pittsburg, on the 12th of this month, on his way to take his seat in this body.

Mr. INGHAM said, the annunciation of the death of a fellow member, who had been associated with us, by the voice of his constituents, in our labors for the common good of our country, cannot fail to excite the sympathetic sensibilities of our nature, which I am persuaded would induce the members of this House to accord the customary testimonials of respect to the memory of my venerated colleague. But, with those who had an opportunity of knowing his worth, many of whom I now see around me, there must be additional motives for paying respect to his memory, not only in the exhibition of suitable external forms, but through the indulgence of the best affections of the human

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*Public Lands in Tennessee.*

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heart. Whether in public or private life, the worth of the deceased was of no common order. All who had the happiness of knowing him as well as did the humble individual upon whom has devolved the melancholy duty of addressing you on this occasion, will bear me testimony that his character combined an association of the most estimable qualities of humanity—an amiableness of disposition, unsullied integrity, and inflexible virtue, adorned by a highly cultivated and ingenuous intelligence. But it is not for me to attempt a delineation of the virtues of so excellent a man, so devoted a patriot. I beg permission, therefore, only to add, for the information of the House, that, ever anxious to be where his duty called him, the deceased left his residence about the commencement of the present session, with a view to take his seat among us. He had travelled, on his journey to this Metropolis, as far as the city of Pittsburg, where he was arrested by the hand of a disease which terminated his journey of life, at the time stated by my worthy colleague. He was, therefore, in the way of his duty as a member; he was entitled by the law and the constitution to the privileges of a member; and the case, though not precisely that of a member dying after his arrival at the Seat of Government, is altogether analogous, and in no material circumstance distinguishable from it. There is, however, a class of cases embracing a wider extent, in which the House, with unanimity, accorded the customary testimonials of respect. I allude to the well-known case of the ever-to-be-lamented Mr. LOWDES, and others, which I need only mention to bring to the recollection of the House. But I will not do injustice to the proper sensibilities of any member, by anticipating objections to the resolution which I now submit for the consideration of the House.

[The motion of Mr. INGHAM was, in effect, that, in testimony of respect for the memory of Mr. FARRELLY, the members of this House would wear crape on the left arm for the space of thirty days.]

The resolution was unanimously adopted.  
And then the House adjourned.

#### SATURDAY, JANUARY 21.

Mr. STORRS, from the Committee on Naval Affairs, made the following report:

"The Committee on Naval Affairs, to whom was referred the memorial of Isaac Phillips, formerly a Post Captain in the Navy of the United States, respectfully report:

"That the memorialist was appointed a Captain in the Navy, on the third day of July, 1798, and ordered to the command of the sloop of war Baltimore, then employed on the American coast; and, during her cruise, while conveying several American merchantmen to the Havana, she fell in with a British squadron near that port, under the command of Commodore Loring, by whose orders she was boarded by a British lieutenant and party of men, who mustered her crew and took away a number of her seamen. On the return of the memorialist

to the United States, he was, by an order addressed to him by the then Secretary of the Navy Department, on the 10th day of January, 1799, dismissed from the Naval service for alleged misconduct on that occasion. He now prays to be restored to his rank of Post Captain in the Navy; and states that his dismissal was not sanctioned by the Executive Department; and that the letter of the Secretary of the Navy was written without the authority or knowledge of the President. That the circumstances under which he was placed, when his command of said sloop was violated, were such, for the reasons alleged by him, that his dismissal was not justified by any misconduct on his part; and that the Executive Department possessed no power to separate him from the Naval service without a trial by Court Martial.

"The committee are of opinion, that it would be wholly unsafe to act upon the suggestion that the order referred to was issued without authority; and that, if the subject of relief to the memorialist was even properly addressed to the Legislative power of Congress, yet the lapse of time since this order was issued, his acquiescence until this period, and the consequent injurious, if not unjust, disturbance of rank which might be produced in the Naval service, present insuperable objections to any examination of the circumstances which, in the opinion of the President, required that exercise of Executive authority in the case of the memorialist.

"The committee, therefore, recommend to the House the following resolution:

"Resolved, That the petitioner have leave to withdraw his petition."

The report was read, and laid on the table.  
The House adjourned.

#### MONDAY, JANUARY 28.

Mr. POLK presented the memorial of the Legislature of the State of Tennessee, praying of Congress a relinquishment of the title of the United States to certain vacant lands within the territory of that State; to be appropriated by the Legislature thereof, to the purposes of education.

Mr. McCoy said he did not see the necessity of referring the memorials alluded to to a select committee. It occurred to him that the Committee on the Public Lands was the one to which they should be referred. He therefore moved their reference to that committee.

Mr. POLK said, that he apprehended the gentleman from Virginia, in moving the reference of the memorials to the standing Committee on Public Lands, did not anticipate the great labor which would devolve upon the committee to whom this subject was referred, in examining the numerous and complex land laws as well of the State of North Carolina as of the State of Tennessee, necessarily connected with the subject-matter of the memorials, and the examination of which it was important to make, in order to enable Congress correctly to understand and decide upon the application made by the State which he had the honor in part to represent. He would, for the information of the House, briefly state the his-

tory of those laws, and the nature of the present application to Congress, contained in the memorials. In 1789, the State of North Carolina, as well as some of the other States in the Union, ceded to the Government of the United States a portion of their unsettled territory, with a view to aid the General Government, then embarrassed in its financial concerns, to pay off a portion of the debt contracted in the war of the Revolution. But North Carolina, in her act of cession, reserved to herself the right to issue military warrants, and to satisfy the claims of her Revolutionary soldiers, out of territory thus ceded. In 1796, Tennessee, including within her limits the territory thus ceded by North Carolina, was admitted into the Union as a free and sovereign State, and was placed upon an equal footing with her sister States. In 1804, a compact was entered into between the States of North Carolina and Tennessee, which was subsequently ratified by Congress, whereby Tennessee was authorized and undertook to issue grants and perfect titles, on all the bona fide claims of North Carolina, chargeable upon the territory within her limits by virtue of the cession act of 1789. The Government of the United States being well satisfied of the importance of education among the great body of the people in a Government like this, and that the security and durability of all our Republican institutions must rest upon an intelligent and virtuous yeomanry, had, previous to that time, adopted the policy of making liberal donations to the several States, for the promotion of learning and the diffusion of science. The same policy has been since pursued; and the same liberality was intended to have been extended to Tennessee, that has been to her sister States; and, for this purpose, by an act of Congress, passed in the year 1806, six hundred and forty acres of land were directed to be laid off within every six miles square, in a given territory, within the limits of Tennessee, designated in the act to be appropriated to the use of schools, for the instruction of children, forever. This benevolent donation of Congress, owing to the great number of North Carolina claims chargeable upon the territory within which the school lands were directed to be laid off, and from other causes, had been but partially realized. But few of the school tracts have been laid off, and thus a great deficiency exists in the amount of school lands, intended to be given by the act of Congress of 1806 to the State of Tennessee, for the purposes of education. It was to supply that deficiency that the State of Tennessee, by the memorial of her Legislature, presented at the first session of the Eighteenth Congress, and by the memorial which had just been presented, adopted at a recent session of her Legislature, asked of the Congress of the United States a relinquishment of title to the remaining vacant and unappropriated lands within her limits, provision having been made, as she believed, for the satisfaction of all the bona fide claims of North Carolina. The remaining lands that were

vacant, were generally very poor, lay in detached parcels, and would be no object to the United States; but, if put at the disposition of the State of Tennessee, would in part supply the deficiency which existed in the school fund. At the first session of the Eighteenth Congress, when this subject was first presented to Congress, Mr. P. said, he understood some difficulty had existed in consequence of certain claims not having been satisfied, which were issued to the University of North Carolina, predicated upon services rendered by soldiers of the North Carolina line, who were said to be dead, and whose blood was extinct, they having died, as was alleged, without leaving any heirs within the United States. These claims the State of Tennessee had refused to satisfy; believing, as she did, that they were not properly chargeable upon the territory within her limits, by the terms, and the true intent and meaning of the act of cession of 1789. This difficulty, however, he understood had been removed, by a recent act of the Legislature of Tennessee, by which an understanding was likely to take place, between the University of North Carolina and the State of Tennessee. From this brief and imperfect outline of the object of the memorial, and the history of the land titles of the two States, (North Carolina and Tennessee,) as connected with it, he hoped the gentleman from Virginia would see the great labor which would be imposed upon the committee to whom the subject should be referred, and hoped he would not further press the reference of the memorial to the Committee on the Public Lands. That committee had already much business before it for consideration, and, he feared, if the memorial was referred to that committee, it could not be examined and reported on, consistently with their other duties during the present session. It was a subject of considerable interest to the people of Tennessee, and could not injure either the General Government, or any of the other States of the Union; but, on the contrary, granting the prayer of the memorial, would be promoting the policy pursued ever since the foundation of the Government, of diffusing knowledge, and promoting education in the several States. But it was unnecessary to consider the general question upon a mere motion of reference; that would be more properly the subject of consideration hereafter. A select committee, to whom he proposed to refer the memorial, and who would have no other business before them, could consider it at an early day; and after fully investigating the subject, could report the result of their deliberations, so as to have the subject finally acted on during the present session. He hoped, therefore, that the motion he had made to refer the subject to a select committee, would prevail.

When, the question being taken, the memorial was referred to a Select Committee, and the following gentlemen appointed to compose the same: Messrs. POLK, BRYAN, ROSS, ALLEN, of Tenn., HOLMES, PETER, DAVIS.

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*Judiciary System.*

[H. OF R.]

*Judiciary System.*

The House then passed to the unfinished business of yesterday, which was the consideration of the resolution offered by Mr. MERCEUR, to recommit the bill to extend the Judicial System of the United States, with instructions, &c.

Mr. BURGESS, in rising to address the Chair, said: This great question is the entire Judiciary of the United States. It was placed before Congress by the President; has been by this House referred to the appropriate committee; and they have detailed to us the great judicial diseases of the country, and proposed, by this bill, a remedy for them. It therefore concerns the administration of national justice, and our attention is moreover loudly called to it by a great and respectable portion of the American people.

The resolution moved by the honorable gentleman from Virginia (Mr. MERCEUR) proposes a recommitment of the whole subject; to the intent that, the Judiciary, built at several times, and in distinct parcels, may be re-edified into one great whole, and accommodated to the present and future wants of the nation. The system of the bill is a Supreme Court, holding one term only, each year, sitting at Washington only, and beginning that term on the first Monday of February, as now is done; a Circuit Court, according to the present circuits, and four new ones to be formed from the circuit and the districts comprehending the nine States in the Valley of the Mississippi. These ten circuits are to embrace all the districts in the United States, excepting those of West New York, West Pennsylvania, and West Virginia, alone. In every district but these three, district judges alone shall be compelled to sustain district jurisdiction only, hold district rank, and receive district salary; in these three, with the same pay, and the same rank, they shall be obliged to perform circuit duties, and sustain circuit jurisdiction. In each of the other districts, formed into ten circuits, justice shall be administered by a circuit judge, sustaining the jurisdiction, holding the rank, and receiving the salary of a circuit judge, and a supreme judge, at the same time, and these, united together, shall form a Supreme Court of ten judges. These, sir, are the peculiar provisions of the bill.

Throughout the whole debate, the opposers of the system of the resolution misconceive, for they continually misstate, the objections made by the opposers of the system of the bill. They call them, 1st. A denial of justice. 2d. They pronounce them to be the same oppressive measures which originated the war of Independence. 3d. They denounce against them the *lex talionis*. 4th. They warn them that their Supreme Court will become odious to the people.

Does the present system deny justice to any man? Extra judicial causes may obstruct the course of it; but is that a denial of the right to justice itself? As well may they say, that,

because the snags and sawyers of their rivers obstruct the passage of their vessels upon them, Government, unless she remove those obstructions, denies the right of these people to navigate those waters. The opposers of this bill are not answerable for the inconvenient structure and slow movements of the old judiciary machine, or the diminished quantity of work produced by its operations. Neither do they propose to repair it by some two or three additional wheels, or any quantity of supplemental gearing. They do not believe it worth repairing; or that any amount of costs will put it in condition to do the judicial work of the nation even "pretty well," for any thing like "twenty years." They propose to rebuild it on the true constitutional model; and accommodate its structures, speed, and production, to the movements and wants of the present, and probable future, condition of the nation. Adopt the system of the resolution, and you will have no obstruction, no delay, no denial of justice.

What is there, in the opposition to this bill, resembling the unfeeling and oppressive causes of the Revolutionary war? Are the opposers kings? Are the advocates of it their colonists? Do these men, at their own pleasure, appoint, pay, and displace, the judges of those courts? Do they deprive them of the trial by jury: or do they, for trial, transport them out of the vicinage, and beyond sea? These were among the causes which produced the war of the Revolution; and separated these States from the parent nation. What in this procedure resembles those causes? Yet this parallel has been drawn in this House; and the sketch, such as it is, published, sent over our country, and will be spread over Europe. "On eagles' wings, immortal, scandals fly." The next importation of reviews, will bring us a profound discourse on the probable disunion of these States; so, and so grossly, do we abuse "Heaven's first, best gift to man," language—the rich medium, by which alone any portion of the treasured capital of intellectual opulence can be circulated in the world. We debase it to the very offices of the miser's woollen purse, which, elastic in its texture, adheres closely to his thumb and finger, cautiously introduced to extract a four-pence half-penny; or stretches to the extended hand of his heir, thrust in up to his elbow, to clutch, and draw out a fist full of eagles. Well might the lad swear "his sister should have no name; because a name was a word, and a word might be abused: and so his sister's good name might come to be abused by every clown."

Why are the opposers of this bill from the "Old Thirteen" threatened with retaliation, by its advocates, from the New States? Whom, and what, do they menace? Their brethren and the home of their fathers. "They went out from us," not "because they were not of us." They are still children of the great household, though settled upon, and cultivating, different allotments of the common in-

heritance. Their paternal sepulchres are with us: and will they leave *us alone* to defend them? The Scythian, though he might not fight for his pasture, his flocks, or his tent, yet, when retreat had brought him back to the grave of his father, would he there, by that consecrated mound, and in defence of it, make the deadly stand, and mortal battle. When, in our sober autumn, they visit us, as they often do, they see the frail memorial yet standing on the green hill-side; and may there read many a holy legend "that teach the rustic moralist to die."

"The time will come," they exclaim, "when the Government shall be agitated to the very centre: and we may want some boon, like that now demanded by them." The perilous day may indeed arrive, when our common country, debased by luxury, agitated by faction, hardened by ambition, arrogant by power, shall not, by piling all the massy and mountainous weight of our laws and institutions, upon this gigantic and bloody brotherhood of crime and slaughter, be able to hold them down subdued. In this tremendous day of national agitation and jeopardy, will these men, or the sons of these men, be found wanting? They will not. We are all embarked in one great national vessel, bound on one great, and, we hope, long and prosperous national voyage. Will they, in the night of storm, throw overboard our share of the cargo, with the vain hope of preserving their own? We know they will not. Will they, on some lee shore, scuttle the ship, to terminate the voyage? Will they, in the hour of assault or battle, pull down the colors, and give up the ship? In God's name, we say, we know they will not. Why, then, these unavailing threats? Brave men should never use them to brave men. Leave them for the accommodation of those who "die many times before their death."

Will the time then come, when our Supreme Court shall be odious, unless the judges of it continue to perform their own, and the additional duties of Circuit Court judges? This doctrine is unknown to the constitution. That projects a Supreme Judicial Court; separate, and supervising all courts of inferior jurisdiction. Will it become odious because it is supreme? Because neither the Executive nor Legislative arm can demolish or diminish its power, or move a finger within the pale of its jurisdiction? Or will it become odious, because it was established to protect, and will probably forever protect, the people from the usurpations of their own national servants? Should it become odious because stationary, and jealousy may lead the nation to suspect that it is influenced by "the powers that be," and that act in this place? Make it then, sir, movable as the resolution proposes. Place it before the nation, in the great departments of our country, that the people may see, and we know they will then reverence, this hallowed ark of our national covenant.

This apprehended odiousness is but an apprehension. Such a court cannot be suspected; it cannot be odious, so long as it is filled by the Marshalls and the Storrs of our country. I do not name these gentlemen, in derogation of other judges of that tribunal, but because I have the honor and pleasure of acquaintance with one of them, and because, not to know the character of the other, would argue myself more unknown, than, humble as I am, I can willingly acknowledge myself to be.

The third great reason, sir, offered in support of the provisions of this bill, is, that they will equalize a knowledge of State laws. This argument is unsound. Because, 1st. No such inequality exists; and, 2d. If it did, the method here proposed, would not afford a remedy for it. Consider, if you please, sir, what, by his oath, a judge of the Supreme Court is fairly presumed to know; the extent and variety of his law learning. Either by original jurisdiction, or appeal, come before him, 1st. All causes of Ambassadors, other public Ministers, and Consuls. Here may be, and is, required, extensive knowledge of the laws of nations. 2d. All cases in law or equity. The requirements of these, will spread before him all the principles of the common, and all the principles of the civil law. These two great codes, dividing the empire of almost the whole civilized world, not by perpetual war, like the German and Roman, who originated them, but with a peaceable common, and, in many countries, a concurrent, dominion—remain to nations as a kind of imperishable memorial of the conquests of mind, when those of arms have long since ceased to have place on the earth. They remain to these United States, and to each of them. They were brought to this country by our ancestors; who shared them with their countrymen, as an inalienable portion of their political heritage. They are the great elements of all the laws of all the States. Wherever a drop of Saxon blood circulates in American veins, there, the folks' law, the people's law, the common law, is the citizen's birthright. There, too, the civil law, the controlling and ameliorating principles of equity and good conscience, are found and enjoyed. These mark out, and designate, all the rights of persons, and rights of things, to be cherished and protected; and all the wrongs of persons, and wrongs of things, to be eschewed and punished; and, moreover, cover them all with a great and healing system of protection and remedy. No man can be elevated to the Supreme Judicial tribunal of our country, without comprehensive, minute, and extensive knowledge of these laws. 3d. These cases are to arise under the constitution. This judge must, then, make himself acquainted with every various construction of that instrument; and be, in all respects, a great constitutional lawyer. 4th. Or they are to arise under the laws of the United States; for adjudicating such causes, therefore, he must be equally and

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profoundly read in the laws and constitution of our country. 5th. All cases of admiralty and maritime jurisdiction come before him. The principles governing these cases, comprehend the laws of ships, freight, wages, insurance, prize, ransom, salvage; and all the laws of the sea, now extant, originating since the Phœnician mariner first spread his purple pennon to the light breeze of the Levant; or, more adventurous, drove, with oar and sail, his foaming prow out between the pillars of Hercules. 6th. The constitution, laws, and treaties, of the United States, are the supreme law of the land, notwithstanding the constitution and laws of any or all the several States, may conflict with them. Such a judge must, therefore, have studied the laws of every State, so far as they are to be compared with the laws, or treaties, or constitution, of the United States. 7th. Cases where a State is a party, come before the Supreme Court originally; but States may be made parties where citizens of the same State litigate land titles derived from different States; a judge of the Supreme Court is, therefore, bound to know all the land laws of such cases, as well in these Western States, as all others in the Union. 8th. Questions between States are of original jurisdiction in the Supreme Court. A judge of that court must, therefore, know all that relates to original charter, or boundary law of each State, as well as all confirming or conflicting State law, or adjudication, on all such questions as may come before him, on trial between such high contending parties. How, sir, shall he make himself master of all these various, and almost innumerable laws? Why, sir, truly, not so much from the practice of courts, or conversation with men, as from books; from his twenty years' conversation with these great, and, though silent, yet communicative masters of the treasured erudition of past ages. Can he not, then, sir, learn what it may further befit him to know, of other laws, in the same manner, and by the same diligence? Can he not learn this, also, from books? What is it? Why, sir, the statute alteration of the common law in each State, and their court adjudications upon such statutes. These are all contained in their books, or in the records of such decisions. These nine States have no *lex non scripta*; no local common law: for the oldest of them is not forty, and the youngest not five years of age; and no usage can have grown up among them into the strength and vigor of common law, in any time less than that, "whereof the memory of man runneth not to the contrary."

This bill proposes to increase the Supreme Court, originally six, but now seven, by adding three new judges, and making the whole number ten. Can this, sir, be constitutionally done? All supreme judicial power is now lodged in the Supreme Court. What judicial power have you, then, sir, to confer on your three new judges? Circuit Court power you

certainly have; for all inferior courts are within your control; but all the supreme judicial power is already vested, and no part of it can be taken away. The Supreme Court is a whole, in all its parts, its properties, its extension, its relations. Have you the power to alter it? How, then, can you add to it? Or is it that wonderful entity which addition to it does not increase, or which, multiplied any number of times by itself, would continue to be the same? We shall all acknowledge, sir, that Congress cannot require, by law, the President to select a judge of the Supreme Court from any particular district or part of the United States; but Congress can create a court inferior to the Supreme Court, and, among the legal qualifications of the judge, insert an inhabitancy or residence within his territorial jurisdiction. This may be the Circuit Court. If, sir, you then annex the office of such a circuit judge to that of a judge of the Supreme Court, you require, by law, the President to select a judge of the Supreme Court from a limited and designated district of the United States; that is to say, from the territorial jurisdiction of such circuit judge. The constitutional power of the Supreme Court is vested in the majority of that court; whatever shall change this relative proportion to the whole number of the number creating that majority, must change the vested power of that court, and must, for that reason, be unconstitutional; but four, the majority of six, is two-thirds of that court; whereas, six, the majority of ten, is less than two-thirds of that court. Making the number of judges ten, is, therefore, altering the power of the court, vested in two-thirds thereof, and giving it to a lesser proportionate number.

What, then, sir, the advocates of the system of the bill may ask—What shall be done? The opposers of it are prepared for the interrogatory: Adopt the system recommended by the resolution. Restore the constitution. Trace out, and fill up, the great judiciary map of 1789; revise, and correct, and establish, the constitutional lines of the law of 1801. We are told, sir, by the gentleman from Illinois, that the experience of a single year overthrew that system. Was, then, the system of 1801 overthrown by experience? As well might the honorable gentleman tell us that brick, and granite, and marble, are improper materials for houses, and palaces, and temples; because experience has taught us, that, at some times, and in some places, earthquakes have overthrown and demolished such buildings. "It was," says the honorable gentleman from Massachusetts, Chairman of the Judiciary Committee, "repealed in one year in toto." Was it because that, or the law on which it was founded, was "enacted in the hurried session of the summer of 1789?" Because it was built on false analogies, or contained awkward provisions? That session, sir, was begun on the 4th of March, and ended on the 24th of September. In this session, of somewhat more than six months, those illustri-

ous men enacted twenty-seven laws, and passed three resolutions. Was this hurried legislation? Why, sir, many a Congress, since that period, putting no extraordinary vigor or hasty effort to the work, have, in less time, sent into the world a legislative progeny of from two to three hundred laws, great and little. What have we now, sir, valuable, or of probable durability, and which was not produced by that Congress, at that session? The Fiscal, the Foreign, the War, the Naval, and the Judicial Department, were then, and by those men, founded, erected, and finished. These great national edifices have stood, and I trust will continue to stand: for, when the vandalism of faction shall demolish them, we shall cease to be a nation. Later times, it is true, have added, now and then, a piece of tiling, or a patch of paint; and the nation has put itself to costs upon the interior garniture of them, the drapery, and other various ornament and accommodation: but, otherwise, these valuable edifices are nearly as old, as unaltered, and quite as venerable, as the constitution itself. "Awkward provisions and false analogies," do we call any part of the Judiciary act of that session? It was, sir, indited by the Ellsworths and Hamiltons of those times—men, whose political little finger was larger than the loins of politicians in these degenerate days. Why, sir, do not men who know, tell us boldly for what cause the Judiciary law of 1801 was repealed? Men of candor—and I trust, sir, such men are in great numbers here—will all agree that party overthrew that system. Why disguise it? Those unhappy days are past, and we are indeed now all "brothers of the same principle." What was *not* demolished in those inconsiderate times? The National Bank, the Army, the Navy, Fortifications—almost all that told the understanding, or the eye, that we are one—tumbled into ruins in the shock of that tremendous political earthquake. Coming years brought better feelings and sounder reasonings; and men have profited of their experience, and re-edified all that was most valuable: The Bank, the Army, the Navy, the system of Fortifications; and we are again a nation. Our fortresses on the ocean and on the land, look out from many a hundred iron eye, ready with indignation to blaze annoyance and destruction against hostile approach. Why, sir, do you not follow this enlightened experience in your Judiciary? The very Turk or Tartar, though he demolish the palace and temple of classical antiquity, yet will he draw from the ruins materials for his stable and his seraglio. He who does not profit by that of others, stands in the next rank of fatuity to him who is a fool in spite of his own experience.

The system of the bill, sir, cannot, it is agreed that it cannot, endure: for circuits will become too numerous to add a new judge to the Supreme Judicial Court for each new circuit. We are told in reply, that we should not legislate for posterity: "let posterity take care

of itself." In what country, in what house, are we, sir, told this? Did the Pilgrims, the Bradfords, the Williamses, the Penna, the Smiths, migrate to this country, for themselves, and not for posterity? Look out upon our American world: not a Government was instituted; not a forest felled; not a city founded; not a house built; not a tree planted; and not for posterity. Where, and what should we have been, but for those who cared for posterity? This house, sir, the great model of art and taste; the pride and ornament of our country, and of the republican world; the magnificent forum of legislation; the hallowed temple of justice—this house, sir, was it built for us, and for the present generation only? No, sir, it was founded by that man whose name spreads the light of glory over our nation, and whose whole life was but one act for his country—for the world, and for posterity. "Let posterity take care of itself!" To a gentleman who could feel and utter such a sentiment, I would address the words of the bereaved Macduff: "He hath no children."

Mr. KERR, expressing a desire to address the House on the amendment, moved an adjournment.

Mr. WEBSTER hoped he would withdraw the motion, as the discussion had already been so much protracted. But Mr. K. not complying, the question was put and carried—ayes, 83, noes 81. So the House adjourned.

#### TUESDAY, January 24.

##### *Judiciary System.*

The House proceeded to the unfinished business of yesterday, which was, the resolution offered by Mr. MERRICK to recommit the bill "further to amend the Judicial system of the United States," with instructions to report it with certain amendments thereto, as heretofore stated.

The question being taken, without debate, on this motion, it was decided in the negative.

Mr. WEBSTER then moved that the bill be ordered to be engrossed for a third reading.

Mr. KERR now entered the House, (having been previously accidentally detained from it,) and addressed the Chair as follows:

He said, that he felt admonished by the vote on the question of adjournment, yesterday, after their latest hour of business had passed away, that he must, with all brief and plain conveniency, express the opinions which he held in relation to the important subject of debate. It had struck him that, if it were important at all, that the discussion should be continued, it was rather an unfavorable opportunity for the delivery of an argument in his plain way, after the delighted attention of the House had been so long enchained by the eloquent illustrations of the gentleman from Rhode Island. He said he had now no other apology to offer, for presenting himself before the House, but of that kind which was adopt-

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ed by the gentleman from Pennsylvania, on Saturday; that, on all subjects of general interest, one desires to express his sentiments in his own way, however little he may hope to better the arguments which may have been before used.

Could he flatter himself that he should succeed as well, in giving efficient support to the advocates of the bill, who had preceded him, as that gentleman was believed by many to have done to its opponents, he should proceed with great alacrity. While the bill was discussed in the Committee of the Whole, he felt disposed to listen to others, and more particularly to the proofs and arguments of the members from the West; but, since the resolution last offered by the gentleman from Virginia, for a recommitment of the bill, with the instructions proposed, had been before the House, he had viewed the question which it involved as one of the highest interest to every portion of the country; as a most hazardous experiment to prostrate the whole fabric of the Judiciary, and to build it up in a new form, and of new materials. On these grounds, though with great diffidence, he was induced to offer himself before the House. He approved wholly of the bill upon the table, and would advocate it in all its parts, not only as affording the best remedy for existing evils, but as calculated to confirm and fix what he considered the fit and proper Judicial system for these United States; an establishment which had been raised up by some of the first founders of the Government, and which ought, in his opinion, to be still preserved. He approved the bill as a remedy for existing evils, and as preserving, as he conceived, the vital principles of our Judicial establishment. He would endeavor to maintain the doctrines, by discussing and refuting, as far as he was able, some of the objections which had been offered against the bill.

On the decision of this question, said he, hangs the destiny of that great co-ordinate branch of Government, the Judiciary of the United States. Whatever apprehensions may be felt or affected, in relation to the *tendencies* which this bill may give to it, in the future exercise of its high functions, if you substitute for it the scheme proposed by the gentleman from Virginia, I venture to assert that you will endanger the constitution and the Judicial system, in the very manner which has been imputed to the operation of this bill. The question is not now between this House and the people of the West, claiming an extension of Judicial means to *clear* their accumulated dockets; but it is, What shall be, hereafter, our permanent system of judicature, in form and character? We cannot, at this time of day, fulfil the injunctions of the constitution, or the solemn declaration, by the people of the United States, with which it is prefaced, that one of its primary objects was "*to establish justice*," without extending the system in the manner prescribed by this bill. The question

is, therefore, no longer, Whether the interests of the Western States require the passage of the bill—whether they shall have a greater or less share in the benefits of the system given to them? But whether it be not now necessary, and the bounden duty of the Legislature, while calm and composed, and having a view to the immense growth of the country, to *fix* and establish a permanent system, with a view to the respective rights and interests of all the States, and of every class and denomination of suitors, falling within its jurisdiction? It was with a view to such inquiries he was induced to offer the present remarks.

In the first place, he would inquire if the present system can be so extended as to ensure the objects in view? He had reference now to a particular extension, with a view to meet present exigencies.

In the last short view, taken by the Chairman of the Judiciary Committee, his statement was, that, as the States west and south, beyond the mountains, could not be reconciled but by having the Circuit Judges extended to them, the committee had proposed such an entire plan as they thought would suit the convenience of all. Less than ten judges, the honorable Chairman of the committee had said, would not answer the purpose; but by classing the States for circuits, as they had done in the bill, the system would be perfected, and might remain adequate for twenty or even fifty years. With great deference, Mr. K. expressed his conviction that, if the bill should pass now, so as to satisfy the present wants of the country, it would not only answer all purposes for the period supposed; but, by a similar extension, and an addition at some future time—say of two more judges—in any, the most expanded views of our increasing population and legal business, the system would continue to be adequate to its ends for one hundred years. He, therefore, accorded fully with the views of the committee, and considered the plan of extension the true one; because it gives permanency to the system, and recognizes and fixes the vital principle of a *union* of the courts.

The motion which had been made to recommit, with instructions, had been founded on two objections, which go against the whole system of the bill: it was objected, in the first place, that the Supreme Court would be too numerous; and secondly, that it was inconvenient and dangerous to keep it united with the Circuit Courts, and to require the judges to sit in both. In relation to the first objection, he was aware of the theory, in which it was generally maintained, that the number of judges who were to decide, in any judicial forum, should not be too numerous, because the tumult inseparable from large assemblies, is inconsistent with the patience and attention requisite to judicial investigation; and that when judges were numerous, they divide the shame of an unjust decision, and take shelter from responsibility under the example of each



other, and that, therefore, they ought to be so few at most, as that the conduct of each may be conspicuous to public observation. He knew that these were the theoretic grounds of writers on this subject, but he said, if we would apply those theoretic rules to our system, and the provisions of the bill, it would be found that none of them would be contravened. A body of ten or twelve judges, secluded from the world, with all the means of legal light before them, study a subject and form their opinions deliberately, each for himself. They meet and consult together, and compare those opinions, and then deliver their judgments in open court. There is no excitement to passion—no cause of tumult—no agitating contests by open argument with one another, as in larger bodies, differently constituted. When a judge takes up a subject, if it be a sheer point of law, there can be no excitement of passion from it. When the case involves evidence and proof, he attends coolly to that evidence; and he decides, in the one case or in the other, according to the law and the fact. In the exercise of the duties of such a tribunal, there cannot be any greater danger of tumultuary movements, or of intemperance of passion, when the body consists of ten or twelve judges, than when it is reduced to five or six. On a bench of ten or twelve judges, each is as conspicuous in the public eye, and as obnoxious to public scrutiny, as if there were only five or six. If you wish to pin them down to responsibility, you have only to make each judge deliver his opinion; he is then fairly before the public, and will be held responsible for the decision in which he concurs.

There was, he said, no magic number, in which only, wisdom and discretion reside. The only objection is, that a tumultuary body is not favorable to calm investigation, and that passion or party feeling would be likely to enter into a court composed of ten individuals. Try this question by the test of reason, and by the touchstone of common sense, and you will find that each member may as deliberately give his opinion and be as well made responsible for it, on a bench of ten or twelve, as in one of any less number of judges. There was really, he said, no danger in the increase. Conjure with the numbers three, five, seven, or twelve, and you will find the largest equally favorable with the rest to cool discussion and deliberate judgment.

On the other hand, we shall derive evident advantages from an increase of judges. We have occasion to concentrate as much learning and talent upon the bench as possible. As reason forbids the apprehension of tumultuary feeling in a body of ten or twelve judges, let experience teach us where we may be obliged to stop, and let us not, from imaginary fears or notions, forego the advantages of the increase of number contemplated and secured by the bill, which is calculated to establish a perma-

nent system. He said the experience of other countries came in aid. In England, the twelve judges adjourn into the Exchequer Chamber, discuss and decide important points, or such as have created a division in either of the Superior Courts; they deliberate and discuss those points, but no inconvenience results from their number; no danger of passion was ever apprehended, and their Judicial establishment has stood on the firmest foundation. On writs of error to the House of Lords, when summoned there, on important questions, they give their opinions *seriatim*, and *settle the law*; for the Lords abide by their decision, and affirm or reverse accordingly. The twelve judges thus decide with as much expedition and convenience as five or six would do. He had understood, too, that the Judicial system of Scotland was entitled to high consideration. It was said they had a celebrated bench of judges, and that the system was an object of admiration; and yet, on the Scotch bench, there were fifteen judges. When we are asked, then, where we are to stop? He would answer, at the point where danger commences. The vast power conferred by the constitution on the Supreme Court, of deciding on the constitutionality of the laws of Congress, and of the States, was, he thought, a fair reason for making them more numerous, than for the mere purposes of decisions in Bank in the other cases within their jurisdiction.

If, then, in theory, ten or twelve judges are not too many, nor inconsistent with sound deliberation, and since that number will be necessary and sufficient to carry into effect all the purposes of judicature, you ought not to regard the suggestions of imaginary dangers when such great objects are to be secured. In relation to our Judicial establishment, he considered the itinerary character of the judges the life-blood of the system, as it gives them opportunities of intercourse with the people, the judges, and the bar, in different States. Their connection with the inferior tribunals affords them the most effective means of improvement and experience, and, at the same time will best preserve them pure and upright. It qualifies them with a more enlightened understanding of many important objects of their jurisdiction. By their circuit duties they are enabled to understand the local laws, and their mental faculties are kept in continual exercise. The practical construction of local laws is difficult to acquire; it is necessary, to that end, to acquire a knowledge of French and Spanish laws, and of the civil law, to enable him who presumes to take a seat in the Supreme Court, to acquaint himself to the public satisfaction. How is this kind of knowledge to be acquired? Not merely in the closet, but by attending the circuits, and deciding causes in different sections of the Union. Without the performance of these practical duties, it is scarcely possible for a judge to acquire the information that is necessary.

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There is, however, another advantage, and that of no little moment. In a Government founded on opinion, it is necessary that the people should be satisfied with judicial decisions. In the course of performance of their circuit duties, in different States, judges mingle in the society, and get a knowledge of the people, and become alike known to them. Coming from different parts of the Union, the judges bring together a fund of local knowledge, which enables them to decide with confidence, and to the public satisfaction. It is necessary that they should stand pure and upright before the people, if they would have their decisions received with respect. On the circuit, a Judge of the Supreme Court stands conspicuous in the public eye, and is personally responsible for his own judgments; he knows that if he makes odious or corrupt decisions, they will be carried to the Supreme tribunal, where he must answer, no only to his brethren on the bench, but to the whole nation, for his errors. If, on the contrary, he is seen to decide according to just and correct principles, purely and intelligently, he acquires high personal consideration, and the estimation in which his character is held by the people, gives weight to his decisions. It is this kind of intercourse of Judges of the Superior Courts in England, with the bar and the people, on the circuits, which has preserved to them a high reputation for practical learning and prompt decision, and rendered so famous the judicial system of that country. Mr. K. said he had no particular knowledge of the judiciary establishments of other States, though he might have access to them, and see their outlines in the several constitutions; but the changes which they underwent from time to time, rendered them but doubtful authorities. He knew, however, that in Maryland, twenty years ago, the courts were separate and distinct, and there was no union between the appellate and the inferior jurisdiction. They had three distinct judicial tribunals—a County Court, a General Court, and a Court of Appeals, with a small number of judges in each, and without the principle of uniting the Judges of the Supreme Court by circuit duties within the County Courts, in the trial of causes. But the subject was much discussed in the Legislature, and it was determined to be important that the judges should have opportunities of intercourse with one another; that the chief judges of the County Courts, where all causes, civil and criminal, were to be tried, should form the Appellate Court, and thus, by a constant exercise of their faculties in the trial of causes on circuits, as well as by imparting to one another all the lights of their knowledge and experience, when they should sit together in the Supreme Court, the whole community would derive an equal benefit from the Judicial establishment, and uniformity of decision would prevail. This system has borne the test of twenty years' experience, and is still most approved.

Our judges, when they have decided causes below, have opportunities, when they meet in the Supreme Court, of explaining to one another the grounds of their decisions; though any one judge is forbidden to *sit* on the appeal from his own decision below. It has been remarked by a gentleman from Pennsylvania, that there was a better chance of justice when the judge who tried the cause did not sit on the appeal. It is, at least, an advantage that he be permitted to explain, in some way, the grounds of his decision. It has been the practice in England for the same judges, from whom the case is adjourned, to re-argue it in the Exchequer Chamber, and give their opinions again *seriatim*. So, on a writ of error from the Court of King's Bench to the House of Lords, the judges of the court from which the case is brought, give their opinions as well as the rest. This now, I learn, has become the practice of the Supreme Court of the United States, and a judge is not there excused from sitting on an appeal from his own decision below.

A constitutional objection had been raised to the union of the Judges of the Supreme Court with the Circuits. It is said not to have been in the view of the constitution that the Supreme Judges should perform Circuit duties—nay, it is alleged to be contrary to the constitution. He held clearly the opposite opinion: for the Congress of 1789, who framed the Judiciary Act, were contemporary with the constitution, and their interpretation of it, maintained ever since by practice and acquiescence under it, is too strong to be shaken. He would refer to a decision in the Supreme Court in which the question was held to be thus settled, and at rest. It is the case of *Stuart against Laird*, in 1st Cranch's Reports.

He had no doubt that it was the express view of the men who first carried the constitution into effect, that the system of a connection of the courts should prevail. They took the hint of the itinerary character of the Supreme Judges from the English system, though the gentleman from Massachusetts supposes they mistook the *analogy*. It is true, as he has stated the difference, the English judges at *Nisi Prius* had only to try causes, by the aid of a jury, on pleadings and issues settled in the court from whence the record came; whereas, our Circuit Judges take the suit by their original jurisdiction, through all stages, and to final judgment. If it was necessary and advantageous in England, that their judges should exercise Circuit duties, it was still more important in this country. The same reason for it, operates here as in England, but with greater force. It is important to keep them employed. The maxim has been well expressed by a gentleman in the debate: "A judge should be altogether a judge."

The people who have business in the inferior courts, do not desire *appeals*: nothing but gross injustice, or immense interests, can in-

duce them to go up to the Supreme Court, to incur great costs and expenses. It is, therefore, most important that the Supreme Judges should go to the Circuits, and impart the light of their learning and experience, to settle important cases, and by a constant exercise of their faculties, be kept the more ready to decide the great causes in the Supreme tribunal. He concurred, entirely, in the opinion, that, if those judges were relieved from the circuit duties, and confined to Washington, in the exercise of their functions, where they would never be seen but by lawyers and idle spectators, they would, in a few years, become indolent, and lose their dignity and influence in the eyes of the nation. They will fall into a natural indulgence in the ordinary literary pursuits, or other occupations. Remember, you cannot always enjoy the services of the present Judges of your Supreme Court. A succession of younger men must be placed upon the bench, practised, indeed, in the inferior courts, but having much to learn before they will be fully competent to the arduous duties and responsibility of Supreme Judges—before they will be able to command, for their decisions, the public confidence and satisfaction. It is here, also, that when the judges shall have sunk in indolence, they will become objects of suspicion. While they go abroad amongst the people, in the vigorous exercise of their functions, they are objects of constant admiration and esteem. Under the operation of this system, he believed the present bench had become so illustrious in reputation.

It is said that these judges will form a Governmental Court. How? Are they not independent? Do they not go forth, freed of all shackles from the power by which they are appointed? They will feel that their only chance for happiness and fame is in the preservation of their characters. If a judge will take bribes, there is end of argument on theory: but there are no honors so great as he may obtain by a faithful discharge of his high duties. He can derive no benefit from the power which has appointed him. The moment he receives his patent, and is created a judge, he becomes as great as his creator; and, therefore, needs not to turn, as one gentleman has poetically said, in this debate, like the sunflower to its god.

It has been alleged, by a gentleman from New York, that, by the exercise of this power of increasing the number of judges, we may render them dependent on the Legislature; for, whenever a decision is made that is obnoxious to this House, we have only to create more judges, and thereby subvert the decision. The gentleman forgot that the appointing power was not in this body, but with the other branch of Government. To say, then, that these judges will be influenced by local or sectional views, or feelings, and so get up a faction in the Supreme Court; and, at the same time, to express alarm, lest Executive influence

should blast the wholesome character of the court, and lead it into plans of Federal aggrandizement and consorted power, involved an inconsistency, which he could not unravel or understand. To show that the Judiciary Department itself, independently of the influences of different kinds which had been imputed, would not be likely to attempt encroachments on the legislative power or the State sovereignties, he read a paper from the "*Federalist*," a work, he said, written by men who had a chief hand in raising up this Government; and which, with a prophetic spirit, had foretold the operations of the constitution. This extension of the Judicial system would neither endanger the other co-ordinate branches of Government, nor incur any danger from them. The Judiciary itself, he said, had nothing but a strong moral power to support itself in the exercise of its legitimate functions. Yet it was this part of the system, which would secure and save the rest. He likened its place in the constitution, to the steerage of a ship. The helm is secured by rudder-bands, admirably contrived. It was only requisite to keep up a succession of skilful and experienced pilots, and there would be no danger from the dashing of the wild-popular wave; and their steady watchfulness would detect and ward off any secret approaches of the decoying fingers of Executive corruption.

Mr. K. professed not to be, at this time, enlightened enough to know how far, since the period of their meeting there, gentlemen had permitted themselves to be classed as the partisans or opponents of this administration. Old parties (he thanked God!) were done away, and the caution, which had been attributed by the gentleman from North Carolina, to the gentleman from Massachusetts—if, indeed, the coiled adder lay in the ashes of the act of 1801—had been prudently observed by him. This case had been fairly and properly discussed. He expressed his hope that the bitter feeling of former conflicts would be allowed to repose forever; and he should be equally happy, in seeing that the turbulence of new party feelings should be long repressed. It surely would not comport with the dignity of the House—because the ancient feuds of the Montagues, and the Capulets, had subsided—that they should manifest an impatience to place themselves in the humble attitude of the retainers, or sworn enemies of the *New Prince upon the throne*, (as gentlemen have been pleased to express it.)

The honorable gentleman from Pennsylvania, one of the champions of the old Federal faith, in his calm and dignified manner, had given out to them the proper view of their duty, in this new political crisis, as it was called, and of the fair ground of mutual conciliation; and that simply was, when the measures of Government conform to the true interests of the nation, we should give it a cordial and steadfast support.

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Congress of Panama.

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Mr. K. did not see the occasion for the direful forebodings thrown out the other day in debate, that this nation must, ere long, be shaken to its centre! He thought that no nation had ever arrived at a period of so high and well-founded anticipations of glorious prosperity and permanent happiness, as the present generation have before them. They had every thing to hope, and, if they were true to themselves, but little to fear. To the Judiciary, Mr. K. looked, for restraining every branch of this Government, as well as the State sovereignties, within those orbits which, by the common agreement and mutual concessions of the whole people, had been assigned to them. He prayed that it might be permitted to remain on that solid foundation on which the noble fabric had so long rested. By the provisions of the bill upon the table, no demolition of it was intended. It would be preserved entire, in its general plan and elevation, and a new arrangement only, of some of its apartments, was designed, to suit the increase of the great family. Its symmetry, and the solidity of its foundations, would be neither defaced nor disturbed. He begged, then, that the House would reject the scheme of any fanciful architect, who would raze it to the ground and erect it anew. Mr. K. concluded, by thanking the House for their polite attention, being sensible that, from the embarrassment incidental to his novel situation, he must have delivered a very disjointed argument.

WEDNESDAY, January 25.

*Judiciary System.*

The House then proceeded to the unfinished business of yesterday, which was the consideration of the bill "further to extend the Judicial system of the United States."

Mr. WEBSTER moved that the bill be ordered to a third reading—when

Mr. BARTLETT renewed the motion which he had yesterday made and withdrawn, to recommit the bill to the Judiciary Committee, with the following instructions:

"So as to provide that the several District Courts of the United States shall be required to perform such part of the duties which are now devolved upon the Circuit Courts, as shall render but one term of the Circuit Court necessary in each District annually, and that a Justice of the Supreme Court of the United States shall be required to hold one term of the Circuit Court in each District, in each year."

On this motion, he asked the yeas and nays, which were ordered.

Before the yeas and nays were taken—

Mr. MERCER moved that the further consideration of the said bill be *postponed to the second Monday in December next*.

The yeas and nays were taken on Mr. MERCER's motion to postpone, and were, yeas 45; nays 151.

So the House refused to postpone the bill.

The yeas and nays were next taken on the motion of Mr. BARTLETT to recommit the bill with instructions, as before stated, and were, yeas 46; nays 144.

The question was at length taken on ordering the bill *to be engrossed for a third reading*. Mr. EDWARDS, of N. C., called for the yeas and nays, which were ordered, and taken accordingly, yeas 132; nays 59.

So the bill was ordered to be engrossed for a third reading to-morrow.

And the House adjourned.

TUESDAY, January 31.

*Congress of Panama.*

The resolution offered yesterday by Mr. METCALFE, calling on the President of the United States for the correspondence inviting this Government to take part in the Congress of Panama, was taken up.

Mr. FORSYTH asked whether this resolution was strictly in order; inasmuch as it appeared to be the same in substance with one which had been offered some days ago, on this subject, by the honorable gentleman from South Carolina.

The SPEAKER said he could not decide, until the other resolution should be read.

The resolution of Mr. HAMILTON was then read, together with that of Mr. METCALFE.

Mr. HAMILTON's resolution is as follows:

"*Resolved*, That the President of the United States be requested to transmit to this House, copies of all such documents, or parts of correspondence, (not incompatible with the public interest to be communicated,) relating to an invitation which has been extended to the Government of this country 'by the Republics of Colombia, of Mexico, and of Central America, to join in the deliberations of the Congress, to be held at the Isthmus of Panama,' and which has induced him to signify to this House that 'Ministers on the part of the United States, will be commissioned to join in those deliberations.'"

The CHAIR decided that the two resolutions were, in substance, the same.

Mr. METCALFE then observed, that he had not been aware that his resolution, from its similarity, would be out of order. He had, however, no partiality to the particular form, provided the subject were brought before the attention of the House. He, therefore, moved to take up the resolution of Mr. Hamilton: and the question of consideration being put, it was decided in the affirmative.

Mr. MITCHELL, of Tennessee, said, that he had not risen for the purpose of objecting to the resolution, but merely to obtain information. He wished to know what end the mover proposed to attain. He understood that this subject was now before the Senate: [Mr. M. was here called to order by the Chair, it being contrary to rule to refer to business pending in the other branch of the Legislature.] He wanted to know of what use this information would, at present, be to the House? If, at a subsequent period, we

shall be called upon to make any appropriations for this mission, it may be proper enough to ask for this correspondence; but, at present, he could see no use in it. He hoped the honorable gentleman would give him some light.

Mr. HAMILTON said, that he certainly had no right to find fault with the gentleman from Kentucky, for transferring his affections from his own bantling in favor of his. He owed it to the House, after all that had been said, and after the special reference to himself yesterday, briefly to explain the reasons why he had not, before this time, called up the consideration of this resolution. And here he must be permitted to remark, that when he read, or heard read, in the President's message, that he proposed to send Commissioners to join in the deliberations of the Congress of Panama, he was led to conclude, from the character of our Government, that a measure so new, (he would not call it a startling novelty, as he did not intend to commit himself, at least at this time, by any expression of opinion,) that a proposition so portentously interesting to the foreign relations of the country, would have been contemporaneously communicated to this House with the message which was sent to the Senate, because it was rather to be considered as a national, than an Executive measure; and as it might involve, ultimately, the most important considerations. When, however, he found this was not to be the course of the Executive, he had submitted the resolution, under an impression that the sooner the information could be had the better. On the day on which its consideration was in order, the Chairman of the Committee of Foreign Relations was so kind as to seek him, in order to state that he had communicated with the Secretary of State, and that the information desired would come here at the proper time, and in due season.

The gentleman from Georgia, the Chairman of the Committee of Foreign Relations, advised him not to press the consideration of the resolution, as it might be regarded as a violation of a proper feeling of delicacy to the President. Convinced of the kindness of the counsel of the gentleman, he was induced to suspend the call; and he was not displeased to find, that, among gentlemen supposed to enjoy the confidence of the Executive, the suspension was approved of; and that they considered it above all things, especially injurious, as seriously violating precedent and practice, to call up a consideration of this kind, while an Executive measure was pending in—another building, which shall be nameless—not, however, more than three hundred feet distant from this. He, accordingly, gave notice that the consideration of the resolution was suspended, and that he would probably call it up at some future period. He found, however, some change of sentiment, after the lapse of three weeks. Some of those individuals, having the confidence of the Administration, who had at first supposed that it might be violating the rules of decorum, to the President, to press it at that time, now thought

that it might be acted upon with safety: that the measure was now right and proper: that we ought to have this information at once. Intimations of this sort he had, in conversation, received from some of those gentlemen, whom he had reason to believe enjoyed, in an especial manner, the confidence and regard of the Administration: and it was not a little singular that they were communicated to him precisely at that time when the gazettes of this city had ventured to inform the public that this splendid project had *elsewhere* encountered serious embarrassment. He appealed to this as a piece of contemporary history, as he would to any fact in Hume, or any other historian, and hoped he would not be considered as violating any rule of order on the subject. To those gentlemen, whose scruples in regard to that comity which is due to the Executive, had been so shortly repressed, he could not but reply, that, if the objection was originally sound, that the passage of the resolution would violate a proper decorum towards the Executive, it came now with redoubled force when the subject was before a co-ordinate branch of the Legislature, under auspices to which it was not his province now to refer; but which would, nevertheless, be fully understood by the House: and that, by getting up a popular discussion at this time, in this House, on a subject pending *elsewhere*, might wear the appearance of our intending to act and re-act, through public opinion, on the deliberations of another body.

These were the reasons which he had avowed in declining to act on suggestions which were unexpected, at least in the quarter from which they came.

Mr. H. said, in making this explanation in regard to the cause of the uninterrupted slumber of his resolution, he candidly confessed he felt indifferent what direction the House might give to it, as they had been pleased to take the resolution out of his own hands. He would not be responsible for it any longer, as the discussion of it at this time was not of his seeking.

Mr. WEBSTER would trouble the House with but a single word. He hoped that this resolution would pass. So far as he knew, the gentleman from South Carolina might have stated very correctly what occurred, but he appeared to him to have given very little explanation of the delay which had taken place; and he now thought, after the lapse of so much time, that the House might, without any imputation of disrespect, ask to be informed in relation to a great public measure, that might make it essential for this House to perform some important act of legislation. An honorable member from Pennsylvania, (Mr. MINER,) had laid on the table an affirmative resolution, expressive of the opinion of this House in relation to the policy that ought to be pursued toward the South American States; and particularly as to the contemplated mission to Panama. It was true, that the subject of our foreign relations had a more close connection with the

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other branch of the Legislature than with this House ; but, in all matters which related to expense growing out of those relations, the House has important duties to perform. It does not, at present, know the facts of this case ; and, therefore, without the least reference to what had been done, or was doing, elsewhere, he thought that this House, as well as the public, might choose to be informed of the true state of facts with regard to this correspondence.

At the request of Mr. POWELL, the resolutions of Mr. MINER were then read, as follows :

*"Resolved,* That the people of the United States have viewed, with deep and anxious solicitude, the exertions of the people of the several States in the southern part of this continent, to secure the inestimable privileges of independence and self-government : that they have seen the proofs exhibited of their fortitude, patriotism, and valor, with admiration, and beheld the success with which a gracious Providence hath crowned their arms, with gratitude and delight.

*"Resolved,* That, as it accords alike with the generous and spontaneous wishes of this people, and the soundest maxims of policy, that the most perfect harmony of feeling and intercourse should be cherished among all the American nations, the principles of whose Governments are founded in an acknowledgment of the equal rights of man, the appointment of Ministers to the proposed Congress of Panama, is a measure dictated by wisdom and propriety ; and provision ought to be made, by law, to defray any expenses that may result therefrom."

Mr. FORSYTH (the Chairman of the Committee on Foreign Relations) rose to address a few observations to the Chair on this resolution. By the adoption of a resolution of this sort, it would be ascertained, certainly, that the information called for is believed by the House, to be of a character which the public interest requires to be before it. But, Mr. F. said, a resolution of this sort implies something more than that. Such a resolution is either founded on the belief that the President of the United States does not intend to furnish this information, or on the belief that it is unnecessarily delayed by the President. Apply these observations to the resolution now before us. Gentlemen would recollect the statement that I had the honor to make the other day, that the President of the United States intends to send this information to the House. Do the honorable gentlemen, then, who are pressing this resolution on the House, mean to say that this information has been improperly delayed ? Do they mean to say to the people of the United States, we cannot wait for the decision of the question by the Executive, as to the propriety of the time at which this information ought to be laid before the House ? The obligations of official courtesy, said Mr. F., require that we should not present ourselves in this aspect to the people of the United States, calling in question the disposition of the President of the United States, to lay before this House information which he has declared his intention to lay before them.

Still, Mr. F. said, if this resolution was pressed, he should vote for it ; because he would not, on the ground of courtesy to the Chief Magistrate, vote against a call for any information which members of this House might think necessary to enable them to discharge their public duties. But he trusted that, in this case, the House would do no such thing as to make the call. The information proposed to be called for, is to bear on the great question of an appropriation for Ministers to Panama. Is such an appropriation asked of us ? said Mr. F. Will it be ? Suppose the information be received and discussed, and we resolve to make an appropriation for Ministers—does this affect the object of appointing such Ministers ? That depends on another Department of the Government. The information to be elicited by this resolution may have an indirect influence—it may operate on public opinion, and, through it, on the other branches of the Government. It can be of use in no other way. Now, Mr. F. said, no Commissioners have been appointed : none can be, without the concurrence of another branch of the Executive, and another branch of the Legislature. Why discuss the propriety of an appropriation for this purpose, when no persons had been appointed for whom the appropriation could be intended ? Mr. F. said he had made these observations from a sense of duty. Yet, he said, the pressing this resolution at this time, placed him and the House in an awkward situation. He could hardly suppose that the gentlemen from Kentucky or Massachusetts wished to do anything uncourteous towards the Administration of the country. Believing they had no such wish, he could not vote upon this resolution, without first ascertaining whether it was the sense of the House that it should be pressed to a decision at this time. Wishing to allow to every gentleman an opportunity to express freely his views of the question, he should not now make the motion to try that question, but would do so before a final vote was taken on the resolution.

Mr. MALLARY then observed, that he did not know what policy was likely to be injured by passing the resolution. He was not aware that it would betray a want of the proper decorum which ought always to regulate the acts of co-ordinate branches of the Government towards each other. The President, at the commencement of the session, had stated, in his message to the House, that he had received an invitation to send Ministers to the Congress at Panama. Mr. M. thought that the information now desired was called for by various considerations. None could think that the asking of it would wound the feelings of the Executive. All admitted that the information was of great importance ; and much inquiry had been excited among the members of the House, why the gentleman from South Carolina had not called up his resolution. Everybody was anxious to see the correspondence to which it related. What ulterior measures were to grow out of it,

none could, at this moment, so much as prophesy: nor was it certain that the House would act upon it in any way whatever. The gentleman from South Carolina had said that it was to lay the foundation for an appropriation of money for the sending out of a Minister. For his own part, he knew nothing of this: but if the information was important, he wished the House to have it; and, he presumed, if they agreed to this call, that they would get it: unless the President should exert that power which is given him by the constitution to withhold the communication. But ought this House to sit still, and wait till the President shall choose, of his own mere motion, to send them this correspondence? Unless the House expresses its desire to possess it sooner, the President will wait until Executive duty requires him to communicate it. Without, therefore, any regard to what may be going on elsewhere, he should vote for this call, because he believed the information interesting to the country, and that it would be useful to this House as an independent body.

Mr. DWIGHT said, that he should be the last person who would seek to pierce that veil of secrecy which the constitution has thrown around the President and the Senate, when engaged in Executive business. But was the slightest wish to violate that privacy betrayed by this resolution? The President has expressly told us that he has been invited to a great and weighty measure. We ask for information, for the purpose of enlightening our minds with relation to it. With our present knowledge, we are not competent to form any correct judgment on the subject. The resolution of the gentleman from Pennsylvania commits the House and the nation to an expression of feeling, in relation to this measure: a measure intertwined with some of the best feelings of the American people. We merely ask the President to communicate to us now, that which he has promised to communicate at some time; yet we do not take away from him the exercise of that discretion which the constitution has wisely reserved to the Executive Magistrate.

Mr. CAMBRELENG agreed, entirely, with the gentleman from Massachusetts. He thought the House ought to get all the information on so important a measure, which can be obtained; and when it should be received, he was willing and ready to go as far as any member of this House, in relation to South America. He considered this mission as presenting a great question; and whether they should be called on to decide on the resolution of the gentleman from Pennsylvania, or to pass an appropriation bill, it was equally important that they should possess the knowledge in question. He had risen for the purpose of suggesting to the gentleman from South Carolina to strike out that part of the resolution, with which it concludes, in the usual words, "if not incompatible with the public welfare." He thought that, on a question of such vital importance, and one which might possibly involve the future destiny

of this country, it was requisite that this House should be put in possession of the *whole* of the facts on this subject, even to the *instructions that might be given to our Commissioner.*

Mr. HAMILTON said, before he replied, he wished to know whether the resolution now really belonged to him or to the putative father of it? He consented, however, to the modification proposed by the gentleman from New York, if he had the control of it: and the words were then stricken from the resolution by the Clerk.

Mr. WEBSTER then moved that the words be restored. He said that in all calls for information which is in the possession of the President, it was usual and proper to limit the call, in the first instance, by the insertion of this clause: and it was very obvious that when such a limitation was introduced, the call ought to be made at as early a period in the session as is practicable: and then, if the reply to it does not contain all that gentlemen wish, the residue can be supplied in a confidential communication afterwards: but it was a thing, he believed, entirely without a precedent, to call on the President for all the information in his hands, on a given subject, without leaving it discretionary with him to withhold such part of it as he may suppose the public good forbids to be communicated.

Mr. CAMBRELENG observed, in reply, that it was in consequence of a suggestion thrown out from the gentleman from Massachusetts himself, that he had proposed to the gentleman from South Carolina, (Mr. HAMILTON,) to modify the resolution in the manner which he had done; and he would ask how that gentleman, or any others, could be prepared to vote on the resolution of the gentleman from Pennsylvania, (Mr. MINER,) or how he could tell whether a Minister ought to be sent to Panama, unless he knows what it is intended he shall do when he gets there? If, however, he had rightly understood the gentleman from Massachusetts, he has suggested that the House need not act definitively until it shall have received the whole of the information, by a secret and confidential communication. If such be the understanding between the House and the Executive, he was willing to take the gentleman's amendment. For himself, he was a warm advocate of the South American cause, yet he could not vote understandingly in the present case, until he knew the whole of the grounds on which the nation was to proceed.

Mr. BARNES observed, that it seemed to be conceded on all hands, that the information is to be given, at some time. In his opinion, the time proper for giving it had now arrived, if, indeed, it had not already gone by. The Congress at Panama is already in session. The House may be called upon to make an appropriation for a Minister, and the Chairman of the Committee of Ways and Means could, he doubted not, bear witness, that bills of appropriation sometimes experience embarrassment and delay.

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Hence it was important, that, if we received this information at all, it was desirable we should receive it as early as possible. "If it be well done, 'twere well it were done quickly." All that the House is entitled to ask for, is that which is laid down in the President's Message. [Here he quoted that sentence in the Message which relates to this subject.] He was not of opinion that the House has the right to call for the *instructions* that may be given to our Minister; having premised this, he would vote for the call.

Mr. WEBSTER wished to say one word, to guard against an inference which appeared to have been drawn from what he had said when last up. He had not spoken of any understanding between the House and the Executive; he had only said, that, if the present call should be made in the ordinary form, and the House, when it receives the answer, shall be of opinion that the President has not communicated all that is desirable, it may make a further call: and if the President shall not have sent a part of the information because he thinks it ought not to be made public, it may then be made the subject of a second and confidential communication.

The amendment, offered by Mr. WEBSTER, was then adopted by the House.

Mr. FLOYD then said, if this was any ordinary call for information, the House would not have been troubled with any remarks of his. He had always consented, and always should consent, to any and every call for information. He had been unwilling to adopt the amendment: he thought that the House ought, at least, to have all the information that can be obtained, if it is to decide on this subject. The question is new to the nation, and to this House; if this amendment shall be sustained in its present form, the President will send us just so much information as he thinks we *ought* to have; and then, to enable this House to form with dignity, a correct decision, we must conjecture the balance.

But, said Mr. F., I am opposed not only to the amendment, but to the resolution itself. Where is the man, in this whole nation, not excluding the President himself, who can tell what this Congress of Panama will lead to? I, at least, on this subject, shall be allowed to be free from personal feelings towards these people. When, on a former occasion, the whole weight of Executive influence sat (to use the expression of an intelligent gentleman on this floor) like an *incubus* on the question of acknowledging the independence of the South American States, I was one of those that dared to come in contact with Executive opinion, and vote for the independence of those States. I entertained that opinion then; I entertain the same opinion now, and precisely in the same degree. Sir, I am in favor of this people, and I am in favor of "an American policy." But is this to lead us to all the entangling consequences which may grow out of this Congress? I have understood that this Congress at Panama is intended to be a counterpoise to the Congress at Verona; that,

as that Congress has declared that they will bring 1,200,000 bayonets against any people in Europe who shall adopt a set of principles looking towards liberty, this Congress is to declare, that, on the American Continent, no form of Government shall be adopted but a republican form. I will have nothing to do with any such scheme. If you wish to protect the cause of liberty, and of free nations, let us send Ambassadors to these people; let us negotiate treaties with them, as we have begun to do. I have seen the treaties with Mexico, with Guatemala, with Colombia: we all know the provisions of these treaties. This measure was very proper; and, if it is to be extended to the rest, it will be very well. But we, who have enjoyed a free Government for upwards of fifty years, are we to put ourselves, at a Congress, on the same footing with those nations? Are we to engage in a crusade against the Holy Alliance, and plunge ourselves into a war with half Europe, and that, too, on a doubtful question? Are we going to unite ourselves in this alliance, and lend our aid in saying, that, as the tyrants in Europe have declared there shall be no republic on that Continent, we will follow the example, and ordain that no nation on this Continent shall be any thing but a republic? That we will dethrone the Emperor of Brazil, and go to war with any part of the Continent that chooses to have a king to govern it?

Sir, there is another subject which the gentleman from South Carolina ought to have weighed well before he stirred in this matter. Shall we not be told by this Congress that *every* man on this Continent is entitled to liberty? Shall we not be called on to consult what amount of men and money will be requisite to liberate Porto Rico and Cuba? and to settle what shall be the condition of Hayti? All these subjects will be debated, in full conclave, and will be settled by *vote*. Does it require the spirit of divination to tell in what situation an American Ambassador will be placed there? One in seven, sir. I suppose, Alta Peru, and the Banda Oriental, for aught I know, will have their Representatives there too. And shall we put the whole happiness of this people at hazard, by committing it to a vote at such a Congress? Yet a gentleman from Maryland tells us that what we do, in this matter, we must do *quickly*. Yes, sir, "*quickly*." Sir, is that the way to legislate for ten millions of people, and on such a question as this?

The President tells us he shall send a Minister; and all we have to do, is, to appropriate for his expenses; and when we ask for some little information about it, the gentleman tells us, what we do we must do *quickly*! Sir, who is here so ignorant as not to know that the Congress of Verona is, in truth, perpetually in session? That the monarchs who compose it are in perpetual correspondence, and have fixed their eyes on the nations of the Southern Continent? Will they shut their eyes to what is done at Panama? Sir, I should like much to know, whether an Ambassador is to be received there.



from the Republic of Hayti? Is this one of the objects in view? Is this Congress to tell the gentleman from South Carolina, and all of us from the Southern States, that "all men are free and equal;" and if you join us to command the Emperor of Brazil to descend from his throne, we shall then turn round to you, and say to the United States, "every man is free; and if you refuse to make them so, we will bring seven republics, in full march, to compel you, in the same manner that, on the other Continent, the Holy Alliance sent their combined armies to march against Naples?"

Sir, I repeat it, I feel as much enthusiasm in the cause of South American liberty, as any man on this floor feels, or can feel; but when I think on the peace and happiness of my own country, I stop short. I would deal out to them the blessing of liberty, and all the other blessings which follow in its train, with a liberal hand—but I am as unwilling that these people should have the control of our interests, as that the King of England should; a gentleman to whom I am not thought to bear any very particular affection. (I bear toward him, however, as much good will as toward the others; and am glad to perceive that, after sixty years of misrule, that Government is beginning to get right in its course of policy.)

Formerly, sir, when a negotiation was proposed by the President of the United States, he first came to this House and ascertained whether the requisite funds would be granted; and then he made the treaty: so Washington did. But, since that day, the treaty-making power has prostrated the constitution; and now, they first make treaties, and then ask us to appropriate the money that is to carry them into effect. Sir, I can see nothing around us but dark, lowering, portentous storms. I am opposed to this whole matter of Panama. But, if we *must* take the draught, bitter as it is, let us, at least, have light to swallow it; let us have all the information that can be given upon the subject. But, no; we are to go to the President's door, and say, "give us, if you please, what *you think* it is proper we should have." Sir, are we not fit to be trusted? The language of all these resolutions is the same; and, when I heard the resolution of the gentleman from Pennsylvania (Mr. MINER) read the other day at the Clerk's table, (I was not in the House when it was offered,) it sounded to me like the voice of an old acquaintance. Sir, I have not altered any of my sentiments on the subject of American liberty, and I suppose I may make this open exposition of those sentiments without being exposed to any particular charge of arraying myself against "the administration!" The opinions I oppose, are the squalid and deformed offspring of European politics—let us not adopt them as our children.

Mr. WEBSTER said he hoped the House would discuss this subject in a manner which became the subject. He was unwilling, in this stage of it, to commit himself on the question of the pro-

priety of this mission. If, indeed, he reasoned, as the gentleman from Virginia, who had just taken his seat, appeared to reason, it was very possible he might be led to the same conclusion with him. The gentleman *assumes* the ground, and then draws his inferences: but this did not appear to him a very conclusive mode of reasoning. It was because he wished to be informed of what the gentleman takes for granted, that he was in favor of the present call for information. The gentleman says there is to be an alliance, offensive and defensive, between all the nations who are to be represented at Panama, and he wishes to know whether we are to be committed to any such alliance? Sir, I wish to know the same thing; and, if it is so, it will be a most material fact as to the judgment I am to form on the whole subject. So the gentleman wishes to know, whether that Congress will acknowledge the Republic of Hayti? I wish to know the same thing; and, therefore, it is that I ask for this information.

As to Hayti, however, I have no hesitation in saying, that I hardly think it can be called independent; nor shall I think so, as long as its present commercial connection with the mother country continues. Sir, the great difference between the gentleman and myself, lies in this: he takes it for granted that these things will happen; I wish to know whether they will happen or not. I feel some doubt on the general question; but it is a question which, after all that has passed, must come before us to be discussed; and I am desirous, that when we discuss it, we shall have as complete a knowledge of facts as circumstances will allow.

Mr. HAMILTON said that nothing could exemplify more strongly the singular relation in which he now stood to the resolution under consideration, than the fact of the gentleman from Virginia (Mr. FLOYD) supposing that, in originally offering the resolution, he was impressed with very favorable pre-existing regards for this mission to Panama. He could tell that gentleman that, when he presented the resolution, very different sentiments were imputed to him; and, without committing himself in the slightest degree, he would venture also to tell him that he was as little in love, at first sight, with this proposition, as he was. He would moreover tell him, that, in regard to the peculiar interests, to which he had referred, of that portion of the Union which they represented in common, they would always elicit from him a sensibility and fearless vindication which should not be second even to his own.

That he might not be any longer misunderstood, and his resolution be used by others, as an instrument for their own purposes, if it was in order, he would ask leave to withdraw it.

Mr. DRAYTON observed, that he thought the House should take views of this subject, which were entirely distinct from each other. The first is, what is the object of the resolution? and the next is, what is the time when we are to obtain the information? He should not now un-

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dertake to investigate what was the nature, or what were likely to be the effects of the mission to Panama. It was a mission pregnant with important and novel consequences, and unprecedented, as he believed, in the annals of the United States. He did not mean to say, that it was, therefore, an improper mission; he was not inclined to hazard what little reputation he possessed, by attempting, at this time, to say that it was proper or improper; he was without the necessary information, and he could not feel his way in the dark. When he should be able to obtain the requisite knowledge, he should feel himself in circumstances to form a better judgment. The mission, so far as he knew, was without a precedent in the history of this country. Heretofore, Ministers had been sent abroad to settle questions of war, of peace, of navigation, of commerce, or of boundaries and jurisdiction, which had relation to ourselves and the contracting party. But, in this case, from what means we have of determining what is likely to be the consequences of this mission, it may involve us in an alliance in which the United States of North America, and the United Republics of South America, are to be arrayed against the Holy Alliance in Europe. It seems we are expected to interpose in a great contest of liberty against despotism, and that, if we consent to this mission, our doing so will be interpreted into a willingness to sound the tocsin, and declare ourselves prepared to enter the lists against a combined world.

I do not say that these consequences will necessarily result; but I say, when we consider the language of the resolution, which declares that we ought to send Ministers to Panama, it appears probable that some such object is intended; and if so, we ought to be prepared well to consider the consequences.

It may involve us in entangling alliances with a multitude of powers, and presents a number of important and novel considerations. He hoped that we should have all the information which the nature of the case demanded, and that, when we have obtained it, we shall pause and ponder before we act.

To what conclusion we may come, observed Mr. D., I cannot now say; I am not in circumstances to form an opinion; and I have laid down, as a rule to myself, never to form one, until I am in possession of the facts on which it ought to rest. But, because this is a great and a novel question, on which we have to determine, it is peculiarly necessary that we approach its consideration with due caution. This I think we shall not do by attempting, at this time, to press the resolution which has been moved by my colleague. I think, Mr. Speaker, that a due decorum is as necessary to be observed between the several departments of Government, as between private individuals; and that it can never, with propriety, be violated, unless some great occasion should arise, when the liberty and safety of the nation are in jeopardy. That decorum

is, in my opinion, violated by the present resolution. The President stated, in his Message to this House, if I recollect his language, (and his language is usually remarkable for its correctness,) that "Ministers would be sent to the Congress at Panama." I understood him as meaning by this, that such was his judgment and desire on this subject; but he qualifies this intimation with the remark that "such Ministers would be instructed to do nothing inconsistent with the neutrality of the United States." Though I am forbidden (and very properly forbidden) by the rules of the House to refer, in debate, to any measure which is pending before the other branch of Congress, I presume I have a right to refer to any Executive act or acts. Now, we all know, that whatever may have been in the contemplation of the Executive, his intention, as to this matter, has not been put into execution. No Ministers have been yet commissioned. We must, however, presume that, in the performance of his high trust, he sent his application, on this subject, to the other branch of the national Legislature, but that it has not yet been acted on there; and we are at liberty to conclude that the reason why it has not there been acted on is, that that body consider it a matter of so much importance, that they require time for deliberation, and have not yet arrived at any conclusion. With these facts before us, I cannot but consider the application which is proposed, as not only uncouth, but as an absolute violation of decorum. On the general object of the resolution, I shall not now enter: I may, or I may not, express an opinion on it, at some future period; but I will, in the mean time, move what appears to me the proper course.

Mr. DRAYTON then moved to lay the resolution on the table, but again withdrew the motion at the request of

Mr. TRIMBLE, who said that he saw nothing in the call for information which ought to consume the time of the House. Some questions had formerly been discussed in reference to the South American Republics, and, as well as he could recollect, the calls for information, preceding those discussions, had been made at an early day of each session. Such had been the interest heretofore taken in the welfare of those Republics, that information had, on some occasions, been asked for, without any intention, at the time, to act upon it, or make any further movement. Congress had now been in session nearly two months, and, if he recollected rightly, the House had formerly called for information, and acted upon it at an earlier day. Why delay the call any longer? It is not too soon to make it in the usual and regular course of business. We all wish to see the correspondence; and the nation at large may want to see it as well as ourselves. It is a matter of great public interest, and the will and wishes of the public ought to be consulted. If he was at liberty, on this motion, to con-  
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ture what the views of the Executive were, as others had done in their remarks, he would not infer, from any thing he had seen, that a mission to the Congress of Panama would lead to any alliances, offensive or defensive. If the object of this mission was to make an offensive alliance, he was free to say that he would unite with his friend from Virginia (Mr. FLOYD) in his opposition to it; but he understood, from the Message, that this Government did not intend that our Ministers should take any part in any of the discussions in that Congress, which might, in any wise, draw our neutrality into question. He was satisfied that no alliance of the sort, alluded to by gentlemen, could have entered into the views of the Executive. Such a mission, upon an occasion so new and extraordinary, must have much higher objects in contemplation, than a mere treaty, offensive and defensive.

If, however, there was any danger in the mission, that in itself was a good reason to hasten the call for information. He had always been of opinion that this House might properly act upon such subjects, either to hasten or retard the movements of the other co-ordinate branches of the Government. It was certainly out of order to refer, as had been done, to what was supposed to be going on in the Senate; but, suppose a case before that body, connected with the highest interests of the country; and suppose that doubts should exist in the minds of some Senators, as to the proper course to be taken, would not such Senators be willing to know the views of this House, before they should act decisively? And, in a case of real, not imaginary danger, would it not be right to understand the wishes of the country, so as to allow the action and reaction of public opinion to have some weight in the determinations of the two Houses? This mission was a question of national policy, upon which public opinion ought to have its full force. It would be useless to call for information after a false step shall be taken, however fatal that step might be. His leaning was decidedly in favor of the mission, and he thought there ought to be but one opinion in this country on the subject; but it was possible he might be mistaken, and would not pre-judge the matter either way, until he should see the correspondence.

If he understood gentlemen rightly, they did not oppose the call as improper in itself, but because it might seem to manifest a want of proper decorum towards the Senate. He saw no disrespect to the Senate in the call for information. What is the character of this thing called *comity* and decorum? The Senate sit with closed doors upon Executive business. Are we about to open them? Certainly not. Are we about to ask what the Senate is doing? No such thing. They have a right to shut their doors, and it is the usage of that House to do so; but are we forbidden by *comity* to ask for information, because that body may

happen to be sitting with closed doors reading the correspondence which we are asking the President to lay before us? The Houses owe duties to each other; but both owe duties to the nation, and each to itself. He considered it the duty of this House to be well informed upon all subjects brought before the other House by the Executive, for its adoption or rejection; especially where, as in the present case, great national interests are concerned. *Comity* and etiquette might be very wise in their proper places; but he could not agree that matters of great national concernment should stand aside for such reasons. He could see no propriety in laying the resolution on the table, and he thought it would be as well to delay the discussion on the merits of the question until the House should have the facts before it. Such a mission, in his opinion, ought not to be rejected, unless this House should concur in the rejection. It was a measure involving great questions of public interest, which might influence the destinies of this country for ages to come, and was, therefore, one of the cases in which a high responsibility would rest upon both Houses of Congress as well as upon the Executive. He thought there was much more danger to be apprehended from a refusal, than an acceptance of the invitation to meet our sister republics in the Congress of Panama.

Mr. DRAYTON now renewed his motion, to lay the resolution on the table: and, on this question, Mr. METCALFE asked for the yeas and nays; but, before they were taken, Mr. DRAYTON again withdrew his motion, at the request of Mr. BUCHANAN.

When Mr. ALLEN, of Mass., demanded that the Houses should proceed to the orders of the day.

The Speaker replied, that the hour being elapsed for the presentation of resolutions, it was in order for any member to demand the orders of the day; and the further discussion of Mr. HAMILTON's call was, accordingly, for the present, suspended.

THURSDAY, February 2.

Congress of Panama.

The House resumed the consideration of the resolution submitted by Mr. HAMILTON, on the 16th December, calling on the President of the United States for copies of the invitations given to this Government to send Ministers to the Congress at Panama; when

Mr. WOOD, of New York, observed, that he wished to say one word on this subject. The object of the resolution is to call on the President of the United States to communicate to this House such correspondence as he may have received from any of the South American States in inviting this Government to a co-operation at the Congress to be held at Panama. When it was introduced into the House, he had supposed that there could be but one sentiment on the matter. He took it for granted

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that the House would instantaneously accord to the proposition; and he was never more astonished than at the course of this debate. A gentleman from South Carolina (Mr. DRAYTON) has told us that the measure was unprecedented: but how unprecedented? Was it a thing without a precedent that the feelings of the American people should respond to the hopes, and rejoice in the opening prospects of a people struggling to obtain the blessings of civil liberty? If that was the gentleman's meaning, he denied the fact. He would refer that gentleman to the resolution introduced into this House in 1818, and unanimously adopted in 1820. He would refer him to the acts of this Government in 1816, '17, and '18, when we sent messengers to these nations of South America, without any communication having been addressed to this House by the Executive. A gentleman who preceded these commissioners was called upon for a statement of the facts, within his knowledge, in respect to the condition of the Southern continent, and made one of the most valuable communications which has ever been presented on that subject. He referred to the gentleman who is now our worthy and honorable representative to the Mexican Government. The feelings of this House were then in accordance with those of our Southern brethren, from the Gulf of Mexico to Cape Horn; and the pulse of this nation has beat in sympathy with their hopes and fears, their sufferings and successes, from the year 1795 to the present day. The first moment the germ of liberty fructified in that hemisphere, we sent commissioners, not to interfere with our neutral relations, or to dictate to these infant republics what was the course they ought to pursue, but to inquire into their actual condition: to make themselves acquainted with the political state of the country; to learn what were their wishes, and what their prospects of success; and on their return, and on the ground of their report, this House, in 1822, appropriated one hundred thousand dollars, not because Ministers had been sent and must be paid, but to enable the President to fulfil the wishes of the country, by sending them. They were to be sent, however, to such only of these provinces as were in actual possession of independence; they were sent where their presence and influence might be a means of fostering principles allied to our own. The measure now in prospect was, therefore, not an unprecedented measure, but a measure in perfect accordance with all the rest of our transactions with relation to the South American States. When the resolution for acknowledging their independence was first introduced into this House, I, said Mr. W., was one of those who were opposed to it. I feared the state of society in that country was not ripe for such a measure—that it would be premature: but, in 1820, I became convinced that their condition was sufficiently mature—that they understood, and were prepared to appre-

ciate, the value of liberty; and, in fact, were free. I adopted, and acted on, the principles of a gentleman whom I call the Hortensius of the West, and whose argument, in this House, upon the South American question, eclipsed all the displays of eloquence I ever witnessed; and was read, as I have been informed, to his immortal honor, at the head of the armies of Peru.

The gentleman from South Carolina tells us, we have no right to examine into the propriety of this mission to Panama, because it is entrusted, by the constitution, to another department of the Government. What, sir, is this House, whose very organization was for the purpose that it should contain and express the sentiments and feelings of the American people—shall this House be restrained from the expression of that feeling in relation to a great political measure involving the most important interests of this nation? The President has informed us, in his official communication to both Houses, that he has received an invitation to send messengers to attend in this Congress, to consult with these young and free nations on arrangements to be entered into for mutual accommodation and advantage. Sir, what is to restrain us from asking for the facts of the case, and expressing our opinions on the proper course which ought to be pursued? The constitution says that the President shall have power to appoint ambassadors, by and with the consent of the Senate. But, sir, I deny that the Senate has any *priori* power. Their right is to concur in the appointments that are made. Is it the Senate who are to prescribe instructions to foreign ministers? No, sir; that is contrary to the constitution. The President, and none but the President, is the organ of communication with foreign powers. He plans the treaties; he nominates the men who are to negotiate them; and the only right of the Senate on the subject is to refuse to consent to their appointment on the ground of unfitness, for want of the requisite qualifications.

[Here Mr. Wood was called to order by the Speaker, on the ground of his taking too great a latitude of debate.

Mr. Wood replied that he had never yet fully violated any of the rules of this House: that he had not conceived that he could be out of order, since he confined himself to a path that had been trodden bare in the progress of this debate.

The Speaker replied, that the gentleman's last observations had not applied to the subject before the House.

Mr. Wood said he would thank the Chair to state what was the subject before the House.

The clerk was ordered to read the resolution.]

Mr. Wood then resumed. The object of this resolution is to obtain certain information to which it refers. Can any gentleman tell me what this information is? Can any one inform

me, what will be the answer to this resolution? I do not know, but I have a right to conjecture.

We are told by the gentleman from Virginia, (Mr. FLOYD,) that the most tremendous consequences are to grow out of this mission; that the object of the Congress is to form an alliance of republics to counteract the holy alliance of kings; that freedom is to be arrayed against tyranny, and the cause of representative Government against the arbitrary sway of legitimacy. Admit that this will be the fact, and is it an objection to our embarking in such a cause? Sir, I must have some stronger reason than this before I can believe this mission to be unwise. Are we not Americans? Are not the principles of the South American States conformable to ours? Is it unworthy of us to join with this group of republics, and band ourselves against the tyranny of the world? Have we not presented to the eyes of mankind a fit model for their political reformation? But admit, sir, all that the gentleman fears, as to the intention of those who have called this Congress; admit that Cuba and Porto Rico are to be conquered; the independence of Hayti to be acknowledged; and some new Peter the Hermit to preach a crusade against monarchy—ought we not, on the gentleman's own principles, to send Ministers to this Congress, to warn our brethren against such an undertaking? Shall we not give to these young nations the fruits of our experience, and the benefit of our counsel? We know what the gem of liberty is; they do not so well know. They are yet in their infancy—we are advancing rapidly to manhood. We know that the great principles of liberty consist in an equality of rights and privileges, and a full enjoyment of religious toleration. Suppose they have formed some such Quixotic project as the gentleman from Virginia has hinted at—shall they not be indebted to our principles for a wiser course? They need our counsel. They have solicited it. They will feel indebted to our Ministers for communicating it. Shall we not tell them to beware of forming any such schemes? Shall we not advise them to turn their attention to their own internal prosperity; to the enacting of wise and wholesome laws; to the introduction of the trial by jury; to the erection of seminaries of learning; and to the securing, by wise and liberal institutions, the eternal principles of liberty? In their present state they cannot be free; it is vain to think of it. I challenge all history to produce a single instance of a nation attaining the possession of civil liberty who are under the dominion of priests; yet that is now their condition. The priests hold the land; two-thirds of the people are but tenants to the monasteries. Their property must be liberated from this thralldom. Hitherto they have had nothing there but the civil law. They must be taught to introduce the free and manly spirit of the common law, and the use of the trial

by jury. They have had, indeed, the image of a constitution, but it has been an image of iron and lead—of silver and gold—of brass and clay: it is full of heterogeneous and discordant parts. They must be taught to substitute for this, a system of equal rights, and of sober and rational freedom.

They need the presence of our Ministers to warn and instruct them, and to persuade them, if possible, to secure the blessing of liberty to themselves, before they attempt to push the conquest of others. The dangers, therefore, which the gentleman from Virginia has presented in such striking colors, present only an argument of tenfold more power in favor of the mission. Why did we send Ministers in 1818 and in 1822, and from that time to this? It was for purposes like those I have mentioned.

[Mr. MITCHELL, of South Carolina, called Mr. Wood to order, on the ground that his remarks were taking too wide a range.

The Speaker said that, when he had interrupted the gentleman from New York, in the former part of his speech, it had been to suggest to him the inexpediency of discussing the relative powers of this House and of the Senate. He had not expressly pronounced him out of order. The Chair regretted the latitude which the debate had taken, and thought that the whole debate was, in some degree, out of place; though it could not be pronounced, strictly speaking, to be out of order. The gentlemen who opposed this call for information, had endeavored to show that no good consequences could arise from the mission, and that, therefore, it was inexpedient to make the call; the gentleman from New York was now taking the other side, and endeavoring to show what good might arise from that mission as an inducement to make the call. The pertinacity of an argument was one thing, its weight was another. His own opinion was, that it would be much better that the whole debate should be deferred to a different occasion. But, as the point of order had been made, the Chair pronounced the gentleman from New York not to be out of order.]

Mr. Wood resumed. He had, he said, now stated some of the inducements which he thought ought to prevail with the Executive to send Ministers to this Congress. The gentleman from Louisiana had enumerated many inducements. He had endeavored to increase the enumeration. The gentleman from Louisiana had adverted to the benefits which might arise from securing a reciprocity of commercial advantages. It is said, however, that, in our treaty with Colombia, this reciprocity had not been provided for. There certainly could never occur a finer opportunity of securing this valuable object. These South American States contain twenty millions of freemen: they will require the supply of manufactured goods to the amount of one hundred millions of dollars. This country can, at present, supply them with

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but five millions. Where must they go for the other ninety-five? It is evident they must receive this from other countries. If this Government had given protecting duties to the amount of one hundred per cent., they would not have given such a stimulus to the manufacturing industry and enterprise of this country. This is the great field which we ought to cultivate: it opens a door beyond the utmost ken of our sight. To Great Britain it is greater than India: to this country it is greater than the world. And there is no gentleman on this floor who feels for his country; who is impressed, as he ought to be, with the importance of giving a proper direction to its capital, but must long ardently to see some arrangement made with these South American nations. On this ground alone, the President would be justified in sending out these Ministers.

Mr. MITCHELL, of Tennessee, here interposed, and called Mr. Wood to order, on the same ground as had been done by Mr. MITCHELL, of South Carolina. The Chair decided that the member was in order: from which decision Mr. MITCHELL appealed.

The Speaker having again stated the grounds of his decision, the question was taken, and the decision of the Speaker was affirmed, ayes 109.

Mr. CONDIOT now rose to address the Chair, but was called to order by Mr. FORSYTH, on the ground that Mr. Wood was entitled to the floor.

Mr. Wood declared, that he relinquished his right to the floor, as he never desired to speak if the House appeared unwilling to hear him.

Mr. CONDIOT moved to lay the resolution on the table; and, on this question,

Mr. TRIMBLE called for the yeas and nays. They were taken, and were, yeas 60, nays 115. So the House refused to lay the resolution on the table.

Mr. Wood now asked, whether it would be in order for him to speak to the resolution.

The SPEAKER decided that it would not be in order, as the hour allotted to resolutions was past.

Mr. MALLARY then moved that the rule of the House, which lays this restriction, should be suspended.

The SPEAKER replied, that no rule of the House could be suspended, unless the proposal to do so remained on the table one day for consideration.

The SPEAKER then announced the orders of the day.

Mr. WEBSTER moved to postpone the orders of the day, until to-morrow; observing that, since this discussion had been entered into, it would be better that the House should proceed with it at once, and bring it to some issue, instead of thus taking it by instalments.

The question being put on Mr. WEBSTER's motion, it was decided in the affirmative—ayes 108, noes 49.

So the discussion of the subject proceeded.

Mr. WICKLIFFE observed, that he did not rise to debate this question; but, as the House had now, by a large majority, virtually decided that this call for information should be made, he rose to entreat both the friends and foes of the resolution to desist from further debate, and to take the question at once.

Mr. McDUFFIE now offered the following, to be added by way of amendment to the resolution: "And further to communicate to this House, all the information in the possession of the Executive department, relative to the objects which the Republics of the South propose to accomplish by the Congress of Panama, and the nature and substance of the instructions proposed to be given to the Ministers of the United States to that Congress."

Mr. WEBSTER observed, that the amendment certainly proposed an unusual interference with the Executive power. He believed it was a thing altogether without precedent to call for the instructions proposed to be given by the Executive to a Minister to a foreign power.

Mr. McDUFFIE agreed with the gentleman from Massachusetts, that the terms of his proposed amendment were unprecedented: but they were so because such a case had never occurred before, as that presented by the proposed Mission to Panama. He undertook to say, that the whole of the information sought by the resolution, would be wholly unimportant, without the provision of the amendment, to which exception had been taken by the gentleman from Massachusetts. What is the inquiry for this House to make? What do we want to know? Not the moving cause of the determination to nominate Ministers to Panama; not the mere copies of the invitations from the Southern Republics—but the true character of the convention at Panama, and the attitude which our Ministers are to assume there. In what character are we to send Ministers there? As members of an Amphictyonic council; to be bound ourselves, through our Representatives, by the decisions to be made there? What are they to do there? How are they to participate in the deliberations of that Congress? I understand the objects of that Congress of Nations to be, first, to regulate their own internal political affairs: secondly, to resist, effectually, the Spanish Monarchy: and thirdly, perhaps, to accomplish some other vague and indefinite object. I wish to know, then, said Mr. McD., what instructions our Ministers are to take with them? Are they to participate in the deliberations of the Convention, as to the proposed Federative system? Are they to participate in its deliberations, as to resisting the Spanish Monarchy? How are we to know without being apprised of the nature and substance of the instructions to be given to them, how they are to go, what they are to do, what character they are to go in? This was the material information, without which all the other information called for would be wholly unimportant.

Mr. WEBSTER said he thought a little reflection

tion would satisfy the gentleman from South Carolina, that, in his motion, he was leaping before he got to the stile. It was only by means of information which this resolution proposes to call for, that information could be obtained of the terms and conditions upon which this country has been invited to send Ministers to Panama, and upon which the Executive has accepted the invitation. A cardinal principle of this mission, the President had, in his message, informed the House, was, that our Ministers are to do nothing and settle nothing which can compromise the neutrality of the United States. The call for the instructions proposed to be given to those Ministers appeared to Mr. W. to be a most extraordinary one. As to the idea of an Amphictyonic council, it could not be within the reach of possibility that the Convention of Panama could be an Amphictyonic council. It would be like other meetings of diplomatic agents, where each one acted independently of the other, according to the instructions of his own Government. It could not have entered into anybody's contemplation to send Ministers from this country to that Congress, on any other footing. Among other things to be transacted there, it had been suggested that commercial treaties were to be formed; and it was now gravely proposed to call for the instructions to our Ministers relative to the formation of such treaties. Was it ever before heard of, that the graduated instructions to a Minister abroad were called for, previous to their being acted upon, so as to make public, beforehand, what he was required to claim, and what he was authorized to grant or accept? This reminded him of the case of a Minister to a foreign power, having graduated instructions, who exhibited to the opposite party, at once, all his instructions. If we are to send Ministers to Panama, with public despatches, we defeat every object which such a mission could have in view. Instructions given to foreign Ministers are always private, and necessarily so, until they are fulfilled, at least.

We are informed by the President, (said Mr. W.,) that an invitation has been given to us to send Ministers to the Congress of Panama. Does any one suppose the terms of the invitation will not disclose the object of it? We are told, also, that the invitation has been accepted. Does any one suppose we shall not know, from the terms of that acceptance, the purpose for which our Ministers are going? To ask for the instructions proposed to be given to those Ministers, is asking more than has ever been asked before. If ever a case can arise when such a call would be expedient or justifiable, that case certainly does not now exist.

Mr. McDUFFIE said he should be sorry to have the vanity to suppose that he could foresee any thing that could not be foreseen by the gentleman from Massachusetts; but he apprehended the terms of the call proposed by the resolution, merely relating to the circumstances which induced the acceptance of the invitation

from the Republics of South America, were not sufficiently comprehensive to elicit all the information which it was important for the House to have on this subject—and he therefore wished to have the call made specific to the point on which he considered the information most important. The gentleman from Massachusetts seemed to suppose that the whole matter communicated was of course to be published to the world; but that did not necessarily follow. We are called to act (said Mr. McD.) upon a measure, respecting which, it is necessary that we should have all the information which can be obtained. We are to decide the question as well as the Executive. The measure proposed is one which ought not to be adopted without the consent of that body in whose hands is the question of peace or war. I have given no opinion, sir, as to what may be the character of this Convention. That is a question to be determined by the information which we may receive respecting it. But if we are to determine here, a delicate question concerning our relations with foreign powers, and which may, in its consequences, involve the question of peace or war, it is necessary that we should have before us all the information bearing on the case. When the gentleman compared the proposition contained in the amendment with the case of a Minister who disclosed at once his graduated instructions, did the gentleman regard this House, in its relation to the Executive, as a foreign power? When we call upon the Executive for information, is he to deal with us as he would in negotiating with a foreign power? If it is important that the proposed instructions should not go to the foreign world, let them be sent here confidentially. The information ought to be so sent, and so used by this House, as not to prejudice the public interest. This much Mr. McD. ventured to say,—that, whatever might be the sagacity of the gentleman from Massachusetts, or of any other member, he would defy any member of this House to decide this measure with the wisdom which its importance demanded, without the information required by his amendment. He did not hesitate to say, that he, for one, would never vote for any measure committing the peace of the United States, such as this mission to Panama, without an entire knowledge of the character which our Ministers were to bear in it. He referred to the articles of the treaty between Colombia and Mexico, in which this mission was indicated. One of the objects of it there stated, was to "form a solemn compact," by which the States composing the Congress "will be bound"—to do what? "To unite in prosecuting war against the common enemy, Old Spain," &c. Now, said Mr. McD., I want to know, specifically, what are the objects of this Congress—I want to know *all* the objects of it. Some of them, it is perfectly clear, are of such a character as we cannot participate in, without committing the *peace* of this nation. I wish to know from the Executive whatever he has as-

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certained of the objects in view, and specifically what is the intention of the Executive in proposing to send Ministers to Panama.

Mr. HAMILTON said, that if he was to be still considered as exercising a control over the resolution, he begged leave to signify to the House, that he accepted, with great and entire satisfaction, the amendment of his friend and colleague, which he thought altogether pertinent, and calculated to give the House that sort of information which might be required. Before he took his seat he would take occasion to say, that he thought his friend from South Carolina had been peculiarly fortunate in calling the Congress of Panama an Amphictyonic League; and the gentleman from Massachusetts very *unfortunate* in excepting to such an appellation, as it happened that this was the title and designation given to it by the parties in interest—the parties to this Congress. He had read, a few weeks since, a Proclamation put forth (by some public functionary he presumed) in Mexico, calling the Assembly precisely by this name, and invoking its members by the title of Amphictyones of the new world. His friend, therefore, had the best right to infer, that this new Assembly would be governed by a similar polity, and by rules of conduct, in the transaction of business, of analogous import with those of that celebrated League of Antiquity.

The resolution of Mr. HAMILTON, as modified, was then read as follows:

*“Resolved, That the President of the United States be requested to transmit to this House, copies of all such documents, or parts of correspondence, (not incompatible with the public interest to be communicated,) relating to an invitation which has been extended to the Government of this country ‘by the Republics of Colombia, of Mexico, and of Central America, to join in the deliberations of the Congress, to be held at the Isthmus of Panama,’ and which has induced him to signify to this House, that ‘Ministers on the part of the United States, will be commissioned to join in those deliberations;’ and further to communicate to this House, all the information in the possession of the Executive Department, relative to the objects which the Republics of the South propose to accomplish by the Congress of Panama, and the nature and substance of the instructions proposed to be given to the Ministers of the United States, to that Congress.”*

Mr. POWELL asked if it was in order for the mover to accept this amendment as a modification, after his resolution had been amended.

The CHAIR decided, that, as it was, it did not affect the part of the resolution which had not been modified.

Mr. MALLARY now moved to strike out the following words: “and the nature and substance of the instructions proposed to be given to the Ministers of the United States, to that Congress.”

Mr. FORSYTH observed, that the only question of difficulty in his mind, had been as to the time when the resolution should be acted on. The same reasons which had at first induced him to

dissuade the gentleman from South Carolina (Mr. HAMILTON) from calling up his resolution, did not prevail. The House has determined not to regard those reasons. Sir, I am satisfied; all I wish is, that gentlemen should know, that I perfectly understand in what situation the House is placed, and how I myself, now stand. The question now, is not whether we shall ask for this information, but in what manner we shall ask for it. Gentlemen seem to think that our proceeding, in this case, is to be regulated by ordinary rules: as though the case was one of ordinary occurrence. But is this placing the matter on its true footing? It appears to me, it is not. And why not?

Gentlemen are not to suppose, said Mr. F., that we know nothing about the Congress of Panama. The subject has occupied the attention of politicians in all parts of the world for several years. The proposition originated as long ago as in the year 1822; was reduced to form in October, 1823; and has been gradually matured, until the Congress itself is now in session. The idea originated with that illustrious military man, who possesses also, vast political sagacity, (BOLIVAR,) who pressed it on the powers of South America, and it first took an official shape in the treaty between Colombia and Mexico. If gentlemen would look at that treaty they would see the original object of the Convention at Panama, without waiting for information from the Executive. The object of it, as disclosed by the treaty, was a combination against Spain; to induce other powers to enter into an alliance, offensive and defensive, with Colombia and Mexico against Spain, and all the other powers of the world taking part with her against them. The Congress of Panama was to be held with a view to this object for one. With this object we surely have nothing to do—we cannot have, without violating our duty to the people of the United States, and those interests we have sworn to support.

Looking to the treaty, however, Mr. F. said, another object was proposed to be taken into view, after the parties to the Congress have met, and concerted all their plans in regard to the first and main object. The other States of America were then to meet, as one of the articles of the treaty distinctly stated, to consult on great matters of common interest; to establish a point of union in common danger; to erect a council for settling the meaning of words (in treaties)—Mr. F. stated the substance, not the letter, of the Treaty, it not being at hand—and for the conciliation of differences which might, in the course of time, arise between any of these nations. These were the subjects which were expected to engage the attention of the Congress, so far as it was to be directed to any thing beyond the common defence. We have been invited, said he, to attend this Congress; the invitation has been accepted, and we are to go there. All we know of the objects of this Congress is from this treaty. If we go, we go as a party to the Council of Panama, to settle



questions hereafter to arise, and to conciliate differences, among the nations of North and South America: we become in fact a part of this Amphictyonic League. This statement of the fact must show to the House that this is not an ordinary matter of diplomatic intercourse, to be regulated by ordinary means and in the ordinary manner. The gentleman from South Carolina had therefore very justly said, that this House could not act intelligibly in reference to this question, without seeing the substance of the instructions proposed to be given to our Ministers to that Congress—though Mr. F. did not like that phrase, preferring to call for the “extent of the powers” proposed to be given to them, rather than for the instructions. It had been objected, to calling for this information, that we go to Panama to form commercial treaties, and that no such thing had ever been heard of as publishing the instructions given to Ministers in such cases.

Whatever may be the object or the intention of going there, said Mr. F., it is perfectly obvious, from what I have stated, that commercial treaties will not be formed there. Besides, if I have any knowledge of facts on this subject, treaties have been already formed by us with most of those powers. Why should we, then, not have the extent of the powers, or the substance of the instructions, to those Ministers, communicated to us? Do we go there to drive bargains with the Governments of the South—presenting them, first, all we wish to gain, and keeping back what we should be satisfied to receive? Certainly not. Our policy towards those Governments has always been an open one—it has been publicly avowed, and I hope never will be departed from. What is it? We say to them, we ask nothing from you—treat us as you treat all the world—we ask no favor from you, and will accept none.

Mr. F. said he did not intend, at present, to trespass further on the attention of the House. It was certain that the House could not decide on the expediency of the measure of the mission to Panama, without knowing precisely all that is intended by it: the character in which our Ministers are to appear there; the part to be taken by them in the deliberations of the Congress, &c. To enable the House to ascertain these particulars, the information proposed by the resolution, as it had been modified, was indispensable, &c.

Mr. MALLABY observed, that the gentleman from Georgia enjoyed much better opportunity of obtaining information on the subject than he did, and had told the House what is to be the character of this Congress that is to be held at Panama—deriving it from the stipulations of a treaty between two of those powers, Colombia and Mexico; but, I would ask, said Mr. M., whether that treaty expresses the understanding or agreement of the other provinces; and does the gentleman undertake to say that this is all the information we must have?

The argument which the gentleman from Georgia had drawn from the provisions of the treaty, to which he had referred, was the strongest one that could be used to induce the House to call for that information, and not take it by inference from a treaty between two of the parties, and infer the great objects from that—but rather go to the sources of information which present themselves, and see what is the object. Could there not be an object regulated between two of the powers, and also other objects for the decision of the Congress, with which they have no concern?

As respects the question immediately before the House, and the motion just made, it proposed to call on the President for information as to the instructions he intends to give. I should suppose, said Mr. M., it would be proper, when you call on the President for that information, you ought to know that Ministers have been appointed, to whom these instructions are to be confided. It seems to me that the call is of such a character as has never before been made. It is said, this is an extraordinary case; and that, having a knowledge of what the object of the Convention is to be, we have a right, in an extraordinary case, and for extraordinary purposes, to insist on the President's communicating the instructions he intends to give to these Ministers. By what authority are the Ministers appointed? Is it not derived from the same source as that by which the President appoints Ministers to France and England—by virtue of the Constitution of the United States, which confers on him the power of appointing, and to the Senate the power of confirming the appointment? Is there any difference in the source from whence he derives this authority, and that which he exercises on any ordinary occasion? It is the same; and if he is resolved to make the appointment, why should you apply a different rule to this case, from that which is applied in all others?

If, when Ministers are sent abroad, this House has a right to inspect the instructions given to them by the President, it shows a power of interference incompatible with the treaty-making power. If we may say, we will inspect your instructions, and interfere in these instructions, we can, with the same propriety, give instructions ourselves, and demand of the President that he shall give the instructions you prescribe. It is a direct violation of the treaty-making power itself; it is an invasion of the privilege conferred on that power by the constitution. That instrument expressly confers the power on the President of the United States. He sends the instructions, and gives his directions; and, when these negotiations are terminated, whatever has been the result, that is to be submitted to the Senate, for their inspection, and they are to decide on it; and then we have a right, if the President has violated the constitution, or if he has acted corruptly—we have a right to investigate the subject. But while the negotiations are going on,

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it seems to me that we have no more right to interfere with the instructions he is to give, or require information as to what they are, than we have to impose instructions on him.

Mr. EVERETT said he felt himself called upon to make a remark or two, in consequence of what had dropped from the gentleman from Georgia, (Mr. FORSYTH.) That gentleman, both to-day and on a former occasion, had expressed himself as standing in an embarrassed position, in reference to this resolution, in consequence of a statement which he had made in his official relation to the House, that is, (as he understood him to mean,) his situation as the Chairman of the Committee on Foreign Affairs. He has informed the House, said Mr. E., that, in that capacity, he has already waited on the proper Department, and received the information that the papers called for will, in due time, be sent, and that he therefore feels embarrassed in calling for them. As a very humble and subordinate member of the same committee, I feel myself called on to offer the House an explanation of this matter, that they may know precisely how it stands. I have, I believe, sir, attended every meeting of the Committee of Foreign Affairs, and been present at nearly every moment when business has been transacted in that committee. I feel, therefore, able to say, that this call for papers on the Panama mission has never been before that committee; that the honorable Chairman has never been instructed to have any special communication with the Department of State on the subject; that he has brought back to the committee no report of the result of such an interview; and, consequently, has been instructed by the committee to make no report on the subject to any individual or to this House. I, therefore, respectfully protest against its being understood, that any such official information, on this subject, is in the possession of the House, or of any member of it. Sir, I need not say that I do not make this remark in the least to impugn the correctness of the statement of my friend from Georgia, the Chairman of the Committee of Foreign Affairs. I was apprised of his interview with the Department of State by himself, very shortly after it took place. I thought I understood its nature; I did understand that it amounted to this: that, without a call, the papers would be sent, and that when a co-ordinate branch of the Government should have acted on the measure. This, I take it, was the full extent of the intimation made to the gentleman at the Department of State; at least, so I understood it from himself, six or seven weeks ago. But I did not conceive, nor had I any idea, that it was to be understood as the wish or intention of the Department that these papers should, under no other circumstances whatever, be communicated; or that the House was to be bound, in courtesy, to suspend its action, under any and every aspect of things, on that informal or semi-official hint. So far from it, sir, that, had I not supposed that, from day

to day, and from week to week, the contingency on which this communication is suspended, would cease to delay it, I would myself, in the Committee of Foreign Affairs, have proposed to instruct the Chairman to move this House to call for the papers.

Before I sit down, sir, allow me also a word of reply to the gentleman from South Carolina, (Mr. HAMILTON,) the original mover of this resolution—a remark I should have made the other day, could I have conquered my diffidence at taking this floor. He alluded to a supposed change of opinion and policy, with respect to it, on the part of those whom he calls the confidential friends of the Administration. He did not tell us who he understood by that name. I hope, in the definition given of “confidence,” by his honorable colleague (Mr. McDUFFIE) yesterday, that the number of the confidential friends of the Administration is not small. Sir, when my friend from South Carolina (for such I am proud to be permitted to call him) first moved this resolution, I thought it premature. Not, I assure him, for the reason he intimated, that it was to react on another branch of the Government: for I declare to you, Mr. Speaker, that idea never entered my head, till suggested by another honorable friend. But I did think there was an urgency in the call, at so early a period of the session, that might as well be avoided. I also thought that a point of the phraseology might, perhaps, be mended; as I have no doubt it would have been by my friend, at my request. I did therefore, sir, come to the House determined, when the resolution should be called up, to ask to have it lie awhile upon the table. The gentleman anticipated me by his own act, in stating the result of a communication which he had with the honorable Chairman of the Committee of Foreign Relations, already alluded to; in consequence of which he had determined to delay his resolution, reserving to himself the right, if the papers did not come in due season, to call it up again. Sir, he did not tell the House what he understood by *due season*. A short time after, sir, two or three weeks, (for I have, of course, kept no memorandum of these small statistics,) my friend did announce to the House, that, on the next following day, he should call up this resolution. But the House, on the following day, was pre-occupied with the great Judiciary question; and this, I thought, was the sole reason why my friend from South Carolina did not fulfil his avowed purpose. If this was the reason, then my friend must admit that the time has not only now come to have the papers, but had come a month ago. If there was any further reason, then, in his candor he will grant, that the friends of this mission (if there is any part of the House which ought now to be called by that name) did not set the example, however they may have followed it, of a change of opinion as to the time when these papers ought to be called for.

As to this call, sir, I think the time has come. I will not now discuss the question, nor attempt to prove the expediency of the measure, although I am, even now, very favorably prepossessed in regard to it. But I want more information. I have not been an inattentive observer of what is passing in the new States to the south of us; on the contrary, I have read every thing that has come within my reach from them; but I feel my want of farther light: for several things have, in this discussion, been stated by honorable gentlemen as facts, which were not known to me as such, and which I, even now, have difficulty in admitting. When the information comes, sir, if my impressions remain as they now are, I will seek an opportunity of expressing my views to the House on this great question. Meantime, sir, I think the information ought to be here before us, the people, or at least standing in the place of the people, so that, when we are called to act, we may do it with a full understanding of this important subject.

Mr. ALEXANDER, of Virginia, then addressed the Chair in some observations, the first part of which were delivered in so low a tone of voice, as not to be distinctly heard by our reporter. When he was heard, we understood him to say, that his objection to the present resolution respected the time and manner of this application. The subject was still before the originating power of the Government, and he thought that considerations of delicacy ought to induce the House to refrain from calling for this information, while the subject remained where it was now understood to be. It might well be conceived that a case might occur in which the other two branches of the Government should be divided in opinion. The Administration might possibly think that one branch of the Legislature was too slow in its movements, and might have resort to the other for the purpose of stimulating them to greater activity. He thought this precedent a most dangerous one. It had been said that the House had two precedents before it to sustain this call, under present circumstances, to show that this department of the Government has been appealed to on extraordinary occasions, as being supposed to speak the voice of the nation. What are these precedents? The first was an occasion when two of the departments of the Government were at issue about the execution of the law of the land, and when the whole burden was thrown on the shoulders of this House. This, however, was but arraying one portion of the Government against the other. The other precedent related to recognizing the independence of the South American republics. The Administration was then considered as slow, and this House was called on to pledge the support of the nation to that measure. The resolution, however, in that case, passed by a bare majority. At the next session, the Administration had set forth its reasons for the delay, and they were unanimously approved.

Mr. A. said he was opposed to acting on the principle of these precedents, and did not wish to add to them. He presumed that, when the subject had gone through its proper course elsewhere, it would be laid before this House. Until which time he was not disposed to act upon it.

Mr. RIVES said, it seemed to him indispensably necessary, to enlighten the judgment of this House, in deciding on the propriety of the mission to Panama, to have some information as to the objects and reasons for instituting: on the part of the Executive of the United States, as well as the information called for by the former part of the resolution, as to the objects contemplated by the republics of South America. It must, he thought, be apparent to every gentleman, that they would proceed in the consideration of the subject with very defective lights, if they should content themselves with information merely as to the objects of the *South American republics in organizing* this Congress. Some of these objects, Mr. R. said, were not *legitimate* objects *for us*, but were such, as it was conceded on all hands, would not be proper for the Government of the United States to accede to in any manner whatever. One of these objects, it had been suggested, was to form a treaty of alliance, for the purpose of defending the independence of South America against attempts of the Spanish monarchy, and against external aggression from any other quarter. As it regarded *this object*, no gentleman, he thought, would contend, that the United States should send Ministers to Panama to co-operate with the South American States; but there might be *other objects* there might be *motives of policy*, (upon which, however, he gave no opinion,) which might render it proper and expedient, on the part of the United States, to be represented in this Congress. He wished, therefore, for himself, and he thought the information would be desirable to others, to know not only *what were* the objects contemplated by the republics of South America, which he supposed would be disclosed by the correspondence which had passed between them and this Government; but, also, what were the views of our own Government in proposing this mission. As to the particular form in which these views were to be disclosed to the House, there existed, if not difficulty, at least some delicacy. It would not, he thought, comport so well with the nature of the relations subsisting between this branch of the Government and the Executive, to call for the *instructions* proposed to be given to these Ministers, either in substance or in form. These instructions were an *ulterior* matter; it could not be supposed, in the present stage of the business, that the Government of the United States had made up its mind as to the specific nature of the instructions themselves; that was to be decided on after the mission had received the necessary sanctions. But it must be presumed that an opinion has

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been formed as to the objects of policy which, in the estimation of the Executive, render this mission, on the part of the United States, expedient.

If the President came before this House, asking an appropriation to defray the expenses of this mission—for it was only in this point of view that any inquiry into the matter was allowed them—it was not sufficient for the House to know that the mission was thought by him to be desirable, but it was their right and their duty to call on him for an explicit disclosure of his views in instituting it, and the ends which were sought to be attained by it. In relation to all other objects which rendered an appropriation of money necessary to carry them into effect, it was the ordinary practice of the Executive Department of the Government, whenever the suggestion of such a measure originated with that Department, not only to indicate the object to which the appropriation was to be applied, but also to state the considerations and motives which rendered that object a proper one for the patronage of the Department which had the control of the public money. It would not, he thought, be any violation of personal or constitutional decorum towards the Executive, nor would it embarrass the negotiations in the Congress of Panama, as suggested by the gentleman from Massachusetts, (Mr. WEBSTER,) to call on that Department, as a preliminary to our sanction of this mission, for a general, if not specific, disclosure of the objects sought to be accomplished, and the arrangements intended to be entered into, by sending Ministers to this Congress. Believing information of this nature to be absolutely necessary to guide this House in its ultimate decision on the subject, he thought the form in which he now proposed to ask for it, would not be liable to either of the objections suggested from other quarters of the House.

Mr. R. concluded his observations by moving to amend the resolution, by striking out the following words: "and further to communicate to this House all the information in the possession of the Executive Department, relative to the objects which the republics of the South propose to accomplish by the Congress of Panama, and the nature and substance of the instructions proposed to be given to the Ministers of the United States to that Congress," (the same clause as was moved to be stricken out by Mr. MALLARY,) and to insert, in lieu thereof, the following: "*and the objects proposed to be attained by the Executive in sending Ministers to that Congress.*"

Mr. McDUFFIE said, that he thanked the gentleman from Georgia (Mr. FORSYTH) for having indicated the word which he ought to have used instead of "instructions." He therefore suggested to the gentleman from Virginia, (Mr. RIVES,) that he should insert, in lieu of his amendment, the following: "*And the powers proposed to be given to the Commissioners or Ministers of the United States to that Congress,*

*and the objects to which they are to be directed.*"

Mr. RIVES accepted the modification.

Mr. WRIGHT said, it appeared to him the proposition of the gentleman from Vermont (Mr. MALLARY) ought to be agreed to, and that of the gentleman from South Carolina (Mr. McDUFFIE) ought not to be. If I understand the constitution, said Mr. W., the treaty-making power in this Government is vested in the President, who is to act by and with the advice and consent of the Senate. This House has no original power to make treaties; in their incipient stages this House cannot act, nor can we interfere in the initiatory steps of a foreign mission. I am confident no gentleman wishes to invade the powers of any other branch of the Government. No, sir, we are all desirous of keeping within the lines prescribed for us in the constitution. Doubting, as I do, the power of the House to determine, in any way, the character of any mission to treat upon our foreign affairs, I am unable to see what is to be effected by a call for the instructions.

[Here Mr. McDUFFIE called the gentleman to order. The proposition now before the House is to change the call for instructions to a call for powers.]

Mr. WRIGHT replied, that he was about to show that there was no material difference between the two terms.

The CHAIR decided that Mr. W. was in order.]

Mr. WRIGHT then resumed. I cannot perceive the difference between these terms. I consider the *demand* of the *instructions* to be given to our foreign Ministers, as an attempt to invade the *powers* the constitution has confided to the Executive; and in asking for the *powers* of those Ministers, shall we not, in substance, do the same thing? What are the powers of a Minister, but his instructions? And what are his instructions, but his powers to enter upon and to prosecute his negotiations? Even if you seek the general objects of the mission, you may require disclosures tending to defeat those very objects, and highly detrimental and embarrassing to the public service. It would be indecorous in us towards the Executive, to call for the powers or instructions intended to be given to our Ministers. The proposition is new and unprecedented. I repeat it, the House cannot interfere in forming any treaty. It has no right to do so. Its right to judge of treaties is an incidental one. When called on to appropriate money, or to do any other act to carry a treaty into effect, or to comply with its stipulations, then it can judge, then it must judge for itself, and has a right to grant or refuse the funds asked as necessary, or to pay or to do any act stipulated for. I know, sir, we may refuse to appropriate money for the salary and allowance of Ministers, where the appropriation is asked for in anticipation of a mission; but I hope the day is far distant when this House shall feel itself constrained to interfere

in this, or in any other manner, to embarrass, impede, or restrain the Executive in the fair exercise of his constitutional functions. Such a course would be beneath the dignity of the House. I will not enter into any discussion of the merits of a mission to the Congress at Panama. In that I will not follow the example of other gentlemen. When those merits come before us, it will be time enough to discuss them. Sir, I hope this proposition to insert will not be agreed to.

Mr. HAMILTON observed, that, as he was desirous to give his resolution a wholesome castigation, he would accept the amendment of the gentleman from Virginia, as a modification of his motion.

[This superseded Mr. MALLARY's motion; as the words he moved to strike out were thus stricken out by Mr. HAMILTON, without the aid of the House; but the words proposed by Mr. McDUFFIE were, by the same act, inserted in lieu of them.]

Mr. WRIGHT then moved to strike out the words proposed by Mr. McDUFFIE, which Mr. HAMILTON had accepted and incorporated with the resolution.

Mr. McLANE, of Delaware, said, that, after what had taken place to-day, he was in favor of making this call; but his object was to make it as general as propriety would allow. He did not, however, wish to embarrass any department of the Government. He thought that it was comparatively of small moment whether the House should call for the instructions or for the powers of the Ministers, inasmuch as the call in the latter part of the resolution would be modified and controlled by the previous clause, which leaves it discretionary with the President to judge how much shall be communicated to the House. We call on him only for so much as, in his opinion, may be compatible with the public interest to disclose. The amendment can do no harm, because, if the President deems it improper to communicate the powers given to these Ministers, he will, of course, withhold the communication; if not, he will make it. For himself, he had formed no definite opinion of the propriety of the general measure; on that subject he held himself in reserve; he need not say what would be his predilections concerning it. What he wished particularly to observe, was, that he presumed it would be agreeable to the Executive to make the communication. But for what he had heard in the course of this debate, he should not have thought that the President was anxious to do so; because, if he had wished it, he might have sent this correspondence to the House long ago. But, from what he saw and heard, Mr. McL. concluded the call would not be disagreeable to the President: and he took it for granted that he would send all that would be consistent with the public good. He would not say that the debate in this House was intended to react on the President or the Senate; but all must know that it

will react somewhere: its reaction will be directed to those very powers who are to meet at Panama. We do not take a step in this affair which they do not observe. Now, sir, I think it one of the soundest maxims of policy, that whenever this Government presents itself to that of another country, it should show an undivided front; that we should not come forward in a crippled and divided state, with one branch of the Government for a measure, and another branch against it; but that we should move in a solid body, and show to others that we are agreed amongst ourselves. As to the call, if this House is to deliberate and to decide on the general propriety of the mission, it seemed to him very obvious that this House should know whatever the Executive knew, that has an important bearing on that measure: if not, the House may come to one decision, and the President and the Senate to another. It does not, however, follow, that we are to adopt this measure.

He thought the House would not adopt: unless it should be clearly shown to be not conducive to the public good. As to the amendment of the gentleman from South Carolina, calling for the "powers" of these Ministers, if I supposed, said Mr. McL., that their powers meant the same thing as their instructions, I should be disinclined to adopt it; but it does not strike me so. A call for their powers appears to me to mean no more than this: whether they are to go to the Congress as spectators, or as agents, or as representatives! Whether they are to take a part in the deliberations, or whether they are merely to aid them by counsel or friendly supervision? If larger powers are given, and are indiscreetly exercised, they may, by possibility, compromise the neutrality and peace of this country; and as a present instructed, I should not be in favor of granting these powers. The whole resolution, however, is subject to the first clause, and leaves to the President the full exercise of his discretion.

The resolution, as modified, was then read, as follows:

"Resolved, That the President of the United States be requested to transmit to this House copies of all such documents, or parts of correspondence, not incompatible with the public interest to be communicated, relating to an invitation which has been extended to the Government of this country by the Republics of Colombia, of Mexico, and Central America, to join in the deliberations of a Congress to be held at the Isthmus of Panama, and which induced him to signify to this House 'that Ministers, on the part of the United States, will be commissioned to join in those deliberations;' and further to communicate to this House all the information in the possession of the Executive Department, relative to the objects which the republics of the South propose to accomplish by the Congress of Panama; and the powers proposed to be given to the Commissioners or Ministers of the United States to that Congress; and the objects to which they are to be directed."

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Mr. FORSYTH rose for the purpose of expressing his dissent from the opinion of the gentleman from Delaware, as to the operation of the first clause of the resolution. The first part of the call relates to the correspondence with foreign powers, and the restrictive clause refers only to this correspondence; but the last part of the call asks for the powers of our Ministers. This, said Mr. F., I cannot vote to leave to the President's discretion. I want the whole. But, if the restrictive clause is to cover the powers of the Ministers as well as the correspondence, what follows? The President may think that the public good requires this mission, and he may also think that if he communicates these powers, the House may defeat the mission, and, in that case, he will, of course, think that it is "incompatible with the public good" that their powers should "be communicated." For myself, said Mr. F., I cannot imagine how a knowledge of these powers is to injure, or any way affect, the public good. We have in this matter nothing to conceal. Our Ministers go to stipulate—but with whom, and to what extent? When we send a Minister abroad, it may often be incompatible with the public good to disclose our correspondence with him, because a publication of that correspondence may put other nations in possession of information respecting our plans and purposes, which ought to be concealed; but no such reason holds in respect to the Congress of these South American States. Whilst he was up, Mr. F. begged to say a few words in reply to what had fallen from an honorable member from Massachusetts, (Mr. EVERETT,) one of the most attentive, and he had no doubt would prove to be one of the most useful members of the Committee on Foreign Relations. I do not undertake to say, observed Mr. F., in obtaining and in communicating to the gentleman from South Carolina the information to which he alluded, and which induced him to postpone the calling up of his resolution, that I acted by the authority of that committee, because the subject had not been before that committee; I acted, in doing so, as the humble organ of this House, with a desire to enable myself to state to the House, as became proper in the position in which I am placed in reference to the House, whether any evil would be likely to arise or not from delay in the call; whether the Department knew of any motive which might make it advisable not to call for any part of the papers, and whether it was contemplated by the Executive to present the information to the House. I thought, as chairman of that committee, that, if I could obtain this information, it was my duty to present it. I was distinctly told that the information would be presented in time, if an appropriation should be wanted; and my understanding was, that, if no appropriation should be wanted, the papers would not be communicated. In this situation the affair lay for three weeks. I still do not know whether any appropriation will be

wanted. The affair remains, so far as I am concerned, precisely as it was. I did vote against acting at all on the subject; but I am entirely willing the information should be had, and that all the information shall be had which is desirable.

Mr. WEBSTER said, that the question now was, whether the House should take the course calculated to effect its own object. The present resolution had been introduced by a gentleman from South Carolina, who seemed to stand in a very convenient relation to it. He repudiates or adopts it, as it suits his purpose. When any proposition is made to amend it, by those who are entirely opposed to the call, the resolution is then his, and he adopts the amendment as a modification. At other times, he has no particular interest in it. Mr. W. thought it was better that the House should dismiss this state of things. It would be better to have a resolution which could be amended by all, and not by those only who are opposed to the motion altogether. As to all the information which can, without impropriety, be disclosed on this subject, I am as anxious to have it as any gentleman. Why should I not be? I am not one of those who can make up my mind, before I have any knowledge of the facts on which it is to be made up; and in the present case, I am still in the dark. I do not pledge myself either to support or to oppose the general measure. And, in making the call, any phraseology, within the usual limits, will meet my approbation. But I object to any call that is without the discretionary clause. Sir, the House tried the experiment when General Washington was President. They applied for the instructions which had been given to Mr. Jay, and they received for answer, that that was a matter which pertained to the treaty-making power. I have prepared, and now beg leave to offer, as an amendment, a substitute for this whole resolution. It is drawn in liberal terms, and will procure, as I believe, all that we have a right to ask for.

The SPEAKER said that this amendment would not be in order while the present motion was pending.

Mr. WRIGHT then withdrew his motion, and the amendment of Mr. WEBSTER was read, as follows:

To strike out all after the word "*Resolved*," and insert the following:

"That the President be requested to cause to be laid before this House so much of the correspondence between the Government of the United States and the new States of America, or their Ministers, respecting the proposed Congress, or meeting of Diplomatic Agents at Panama, and such information respecting the general character of that expected Congress, as may be in his possession, and as may, in his opinion, be communicated without prejudice to the public interest; and also to inform the House, so far as, in his opinion, the public interest may allow, in regard to what objects the Agents of the United States are expected to take part, in the deliberations of that Congress."

The amendment of Mr. WEBSTER was agreed to.

Mr. McDUFFIE rose to congratulate the gentleman from Massachusetts on his conversion; as the proposition he now offered was precisely the same in substance with his own.

Mr. HOUSTON then rose, and said, he should make some observations on the proposition now before the House, such as he thought he was in duty bound to make, having the misfortune not to concur in opinion with some of the gentlemen who had spoken on this subject. That this House should be in possession of the information required, was, he thought, very desirable. For his own part, he had no objection to receive it at the proper time, when they could receive it either by the voluntary act of the Executive, or when this House should deem it proper, without reference to any particular state of affairs, to call on the Executive for it.

There was, Mr. H. said, something peculiar connected with the history of this resolution. It was introduced at a time when the information was thought desirable to some gentlemen, but, owing to peculiar circumstances, or to suggestions made to the mover of it, it was thought inexpedient at that time to urge it on. Affairs since then had assumed a different aspect. One of the co-ordinate departments of this Government, they were told, and he trusted he did not violate any rule of this House in saying so, had acted, as far as they had power to act, with reference to this subject. Another department of the Government, they were informed, had not acted upon it. When the co-ordinate departments should have acted, and presented the subject to this House, then he thought would be the proper time to call for this information. It seemed to be presumed that, when it came before them in a proper shape and character, they would have to pass upon an appropriation for this object; and if such should be the fact, they would certainly require all the information which it was proper for the Executive to submit. They would require all the information connected with this subject: for, as it was to form a new crisis in the politics of this country, it would be certainly proper to have all the premises before them, that they might act understandingly on it. Mr. H. said he would, in such a contingency, urge to have all the information laid before them; but he could not perceive, from the attitude which the subject at present assumed, that any information was necessary at this particular time, for this House, more than it was at the commencement of the present session. If it was necessary now, why was it not so at the commencement of the session? He could not see that the passage of this resolution was necessary now, unless this House was to be called upon to express an opinion on a subject not officially or properly before it.

Desirable as this information was, Mr. H. said, they had the privilege of conjecturing what it might be. He had no rays of light on this subject but such as were disseminated to all the members of the House. The arguments of some

of the gentlemen had appeared to him to be hypothetically urged, presenting the subject in such an enlarged view as indicated a superior knowledge to what he possessed; and as he did not wish to be inferior in knowledge on the subject of this mission, he was not less anxious than other gentlemen to be in possession of all the information in possession of the Executive on the subject. But he wished it to be presented in a proper form, and to come when it was necessary. If it was not necessary on an earlier day, we have now no call for the performance of official duty, that we had not then. When that call was made, then he would himself press the call for the information which had not been submitted to them, and which was necessary on the subject.

The gentleman from Louisiana (Mr. LIVINGSTON) had said, let us determine now, if such is our disposition; that we will make no appropriation when this subject comes before us. Mr. H. was not prepared to say that he would make no appropriation: he was not, he thought, called on at this time for the expression of any such sentiment. There had been no call on this House for an appropriation. And, when that call was made, then would be the proper time to determine whether they would grant it or not. But he did not consider the question now essentially involved. When the application for an appropriation was made, it would then be their duty to act: it was not so now; and, inasmuch as it was not, he did not, at this time, feel disposed to vote for a call for information till he found that call necessary. Convince him of the necessity of that call, and he would unite, with much pleasure, in demanding it; but, if they were to have the information, let them have all that was connected with the subject, that they might know what grounds they were to act upon. The subject could not, he thought, be properly determined by this House without other data than what they now possessed.

We have been told, said Mr. H., that an invitation had been given to us, by the South American Republics, to send Ministers to the Congress of Panama, and that an assurance had been returned that Ministers would be sent. This was a gratuitous assurance, and must have been predicated on the belief that the concurrence of the co-ordinate branches of the Government would be certain: for he could not think that the President alone had any right to send these Commissioners, without the concurrence of the Senate. Could gentlemen think that the Senate would have nothing to do but confirm? That the President was the organ by which the whole nation was to speak; that what he said must be abided by; and that the Senate had no power to determine whether or no they would concur in this nomination? This subject he thought one of vast national importance, and ought to be well weighed by each Department of Government having cognizance of it.

We have been told, said Mr. H., that this is no new project. It was denied by the gentleman from New York, in reply to the gentleman

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from South Carolina, that it was a new project. That gentleman had referred to various cases to prove that it was not new; he had said that appropriations had been made in 1818, '19, and almost down to the present time, for similar commissions, and that they formed a precedent to be applied on the present occasion. Mr. H. said, if he understood the subject rightly, (though it might be his misfortune not to do so,) the appropriations referred to were made to send Commissioners to South America, to ascertain what was the state of the Continent; to inquire into the capacity of the people of that country to receive freedom and cherish it; and to determine how far it was expedient for this Government to recognize their independence, and to form treaties of amity, commerce, and navigation, with them.

This was the object of sending Ministers, Mr. H. said, according to his understanding of the matter. But now we are called on to send Ministers, not to make treaties separately with these powers, but to meet deputies from each of the Republics of South America, to determine in what relation we are in future to stand in regard to them; whether we will join in alliances offensive and defensive with them, or in reference to any other subject that may be presented to that body. Have we not, asked Mr. H., already Ministers in South America, to negotiate treaties with those different Republics? Are they not authorized to negotiate treaties? And is not that the customary way in which the United States act as regards other nations? We do not meet them in assemblies of Representatives to negotiate treaties. We send our Ministers to the courts of the different Governments, and they there negotiate our treaties, so far as is conducive to our interests. We have adopted this plan, and steadily pursued it. It is the correct one. And why should we act differently with the powers of South America? But, if we are called on to meet them in Congress at Panama, what is the consequence? Whether this Congress is intended to counteract the influence of the Holy Alliance in Europe, Mr. H. said, was not a question now to be determined. But, if that is the object, it would be reasonable to suppose that propositions would be submitted. We have our Representatives there. The Representatives of other powers all act in accordance; those of the United States stand aloof; we do not choose to concur in their resolutions—and what is the consequence? We have sent our commissioners, agents, or Ministers, to negotiate a treaty, on the presumption of establishing an alliance with those people: for they expect nothing less from us. Should we decline acceding to their propositions, what would be the consequence? They would say, the Republic of the United States do not cherish for us those feelings we anticipated from her. The United States will not accede to our propositions; they endeavor to stand alone; they have withdrawn from our Assembly, and have set up for them-

selves. Is not this, said Mr. H., better calculated to exasperate these people than if we were not to send Ministers at all? He regarded this invitation, on the part of Bolivar, as an act of courtesy, affording us the opportunity of acceding to or declining the proposition. We could have declined it with courtesy; we could have established with each of these Governments an understanding so as to secure all the advantages we wished, with these people, and every object to be attained by this Government would have been gained. The position we now occupy is different: a pledge has been given; but, said Mr. H., is the nation bound to redeem that pledge? It might have been judiciously given, but we are not sure of that. We have not the information to satisfy us on that point. The House was not yet called on to act upon and redeem that pledge. At this time, therefore, Mr. H. said, the information was not necessary which this resolution proposed to call for. The House had been told that Ministers were to be sent to Panama for the purpose of disseminating our principles amongst the people of the Southern Republics, and of making them acquainted with our institutions; that we are to go there to infuse into them certain principles, and that we are to be the model by which they are to act. Could gentlemen suppose, Mr. H. said, that the deputies from the different Republics of South America would take it as a compliment to be told they were incapable of self-government; that they had not sufficient capacity; that they were not sufficiently enlightened; and that, therefore, the United States had sent their Ministers as special teachers of their doctrines, to give them light on the subject of self-government? Were our Ministers, Mr. H. asked, to be the teachers of politics to them? Did we send them there to enlighten the South Americans—that people who had been lauded, and justly lauded, throughout the world, for throwing off the galling yoke of a despicable tyranny, and proclaiming to the world that they would be free, in imitation of the United States? Shall we send teachers amongst them to infuse our doctrines, and inculcate our political principles amongst them? This, Mr. H. said, was not the way for South America to be free. Unless she wills to be free she never can be so. We might send our teachers to every city, and every village, and establish political colleges throughout South America; but she cannot be free unless she wills it. If she can derive any advantage from the example we set her, let her do so; our ports are open, our houses, our towns, and our assemblies, are all open. Let her citizens come here, and if we disseminate light amongst them, let them return to their fellow-citizens—let them describe the institutions we have in this country, and tell them, "Go ye and do likewise." This is the way, Mr. H. said, that South America is to be benefited by the United States. This will benefit her institutions: if she sends her enlightened citizens amongst us, if she will have



our constitution and our laws translated into her own language, this will infuse energy into her Government, and sustain her politics and her arms, so far as it is necessary for her service. This is the way South America is to be benefited, and in which our principles are to operate on her people. It is not by physical influence that we can benefit them: but it is the moral influence that pervades this country, which they must become acquainted with. They must learn it amongst us, and carry to their own country the knowledge of it.

Mr. STEVENSON, of Pennsylvania, then offered the following amendment:

Strike out the words "*so much of*" where they first occur, and the words "*as may, in his opinion, be communicated without prejudice to the public interest:*" and also the words, "*so far as, in his opinion, the public interests may allow,*" and add, at the close, these words: "*making so much of his communication confidential as he may think proper.*"

Mr. WEBSTER suggested, that it was not in order to strike out words which have been inserted by a vote of the House.

The CHAIR decided that so much of the resolution as related to striking out was not in order: but that so much of it as went to add to the resolution, was in order.

From this decision Mr. FOSEYTH appealed, and said, with proper deference to the longer experience of the Chair, he could not but deem the proposition of the gentleman from Pennsylvania (Mr. STEVENSON) in order. The rule of the House, to which the Speaker referred, is, that words inserted, by way of amendment, cannot be struck out on motion. The propriety of this rule is quite obvious; the House having decided upon the propriety of the words forming part of the proposition, ought not to be called upon again to decide the same question. It does not apply here. The proposition of the gentleman from Pennsylvania to add words, and to strike out others inconsistent with them, does not bring back the same question that has just been decided. It is perfectly distinct in its character, and has not yet been before the House. Mr. F. did not express any opinion in favor of the amendment itself. The House has decided that it will call on the President for such information as, in his opinion, may be safely communicated. The proposition is, that this discretion may be limited to the *manner* in which the *communication* is to be made, whether *openly* or *confidentially*. In making it, the gentleman proposes additional words to the resolution, and the necessary erasure of words inconsistent with them. The additional words are decided to be in order. If adopted, the whole resolution becomes nonsensical; to make it sense, the words proposed to be erased, must be removed from the whole sentence. To erase them is out of order.

The conclusion is, that the part of the amendment which does not alter the proposition, except by making it senseless, is in order, and

that part of it which makes the amendment itself, and the whole proposition intelligible, is not in order. To this conclusion, Mr. F. could not bring his judgment. He left the subject to the House without further remark. It seemed to him clear, that the whole amendment was in order, or none of it.

The decision of the SPEAKER was sustained; and the question being, on adding to the resolution of Mr. WEBSTER the following words, "making so much of his communication confidential as he may think proper,"

Mr. STEVENSON observed, that he wished to vote for the call, but that he could not vote for it under the discretion and limitation. He wanted to have all the facts before the House. He did not wish to command them against the interests of the nation, nor was it his wish to embarrass the Executive; but he wanted to have full light on the subject—the same light which the Executive has had upon it, and as another branch of the Government is now supposed to have.

If the secrets of the nation have been confided to two branches of the Government, he thought that the Representatives of the people also were entitled to a full knowledge of them; and he, therefore, wished that the President should, in the first instance, communicate in a public manner, as much of this information as he may think proper, and then give to the rest a confidential character, if he prefers it.

Mr. INGHAM rose, to ask his colleague to withdraw the last part of his amendment.

[The only part very important was the former clause of it, and which was prevented from being inserted by a rule of order.]

He wished him to withdraw it, that he (Mr. I.) might be enabled to refer the entire resolution to a Committee of the whole House with instructions to strike out the discretionary clause, where it last occurs; and on this question he should demand the yeas and nays.

Mrs. COOK suggested that this was unnecessary. The President had this discretionary power by the constitution, and will no doubt exercise it, if he considers such to be his duty. He suggested that the object might be attained by a reconsideration, without any reference to a Committee of the Whole.

Mr. STEVENSON having withdrawn his motion to amend, the question was loudly demanded; when

Mr. INGHAM rose, and observed, that he should not be put down by any call of "question." He considered the subject as of too much importance to be deterred from doing his duty in regard to it, either by an expression of feeling in the House, or by its want of courtesy; and though the hour was late, he thought the opportunity ought to be availed of to have his motion made and a vote taken upon it. He would, however, slightly change its form. He then moved to refer the resolution to a select committee, with instructions to strike out the discretionary clause, where it last occurs. On this mo-

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tion, the yeas and nays were ordered; and then the House adjourned.

FRIDAY, February 3.

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The House proceeded to the unfinished business of yesterday, which was the motion of Mr. INGHAM, to commit the resolution of Mr. HAMILTON, as amended by Mr. WEBSTER, to a select committee, with instructions to strike out the clause which leaves it discretionary with the President to communicate the papers called for by the House, so far as relates to the objects in which our Ministers are expected to take part in the discussions at Panama.

Mr. METCALFE said, that the motion he was about to make was not introduced with any desire to prevent the discussion of the general subject, but only that the House may determine at once on the question of making a call for the papers, which ought to be the groundwork of the discussion. All legislation is suspended by a long debate on the propriety of calling on the President for a certain correspondence—a debate which he was far from anticipating when he called up the resolution of the gentleman from South Carolina, and he thought that this was a proper occasion for taking the *previous question*, to preclude further debate on a question not before the House: he moved it accordingly.

Mr. FLOYD hoped the gentleman would withdraw this motion; he never liked either it or the sedition law.

The SPEAKER pronounced all debate at present out of order; and proceeded to take the question on Mr. METCALFE's motion, which was negative; ayes 75—noes 90. And the question recurring on Mr. INGHAM's motion to refer Mr. HAMILTON's resolution to a select committee,

Mr. INGHAM then addressed the House. He said he could not but congratulate himself, and the House, and the nation, on the failure of the motion for the previous question. The subject now before the House (said he) is one of deep and vital interest to our country, and deserves all the consideration which, with our most mature reflection and judgment, can be brought to bear upon it. It is a subject, therefore, of real congratulation that an attempt to foreclose every amendment as well as all debate, has met with such a decided negative. The time is not yet come, I trust, when questions of this nature are to be thus disposed of. The previous question was always regarded as a high-handed measure, only to be resorted to in time of great national difficulty.

I shall now proceed to consider the amendment, and, in the course of my remarks, will confine myself as strictly within the line prescribed by the rules of the House as possible, to which I am admonished by the indications of impatience manifested during the tedious debate heretofore. I do not mean to discuss the question of the Mission to Panama: that

question is not before the House. The only question is, as to the extent of information we require, before we shall be called on to act in relation to this Mission. Should the amendment prevail, it will open a wider field of inquiry than the resolution as it now stands; which contains two restrictive clauses—an anomaly in calls for information of this nature. One is inserted as a matter of courtesy, because we consider the President as having the right to withhold whatever, in his judgment, the public interest may require to be withheld. It is conceived that, for such a purpose, we have no power to coerce his compliance with our call; but on such occasions as this, is it proper for us to depart from the usual course, and admonish the President, by the second restriction, only to give us what sheer necessity requires? The resolution, without the second clause, would justify an ordinary discretion: but with it, while it purports to ask important information, it admonishes him to forbear: it says to him, don't give us too much: we want very little; therefore, beware that you do not exercise too liberal a discretion in framing your answer. This is not the attitude which this House ought to take on such a question: the consequence of this measure may be too important to have it thus disposed of. But if the motion to amend shall be sustained, it will be a distinct indication to the Executive, that we want ALL the information we can get: that the great interests of the nation demand it. We do this, however, without any feeling of disrespect. I would be among the last to move any proposition, to be sent to another branch of the Government, containing the slightest mark of disrespect. I owe it to myself, to the House, to every consideration which ought to influence my conduct, not to do so. It is admitted on all hands, that we are about to be called upon to act on a great question. How important, then, is it that we should have all the information we can get, to enlighten our judgments in adopting or rejecting the resolution offered by my colleague, which lies on the table. Are we to be compelled to vote in the dark, upon such a question as this? I am free to declare, that I have not finally determined what it would be proper to do in relation to it. The proposition to send Ministers to the Congress of Panama is a measure wholly new in the history of our Government; it may constitute an eventful epoch in our annals: and are we to vote on faith, without the same information which is possessed by the other branches of the Government, merely because it is recommended? I disclaim such doctrine. I must judge for myself and vote upon my own responsibility; not upon faith in any functionary whatever.

I cannot but notice some remarkable incidents in relation to this call for information. Its history has been often adverted to, but it cannot be too well understood. Early in the session, the gentleman from South Carolina moved the resolution. Soon after we were informed,

as coming from the Chairman of the Committee on Foreign Affairs, who is understood to be the organ of the House, having the most direct communication with the Department of State, that all the information would be communicated in due time. No contingency was suggested as influencing the intention to send the documents. For one, I waited, anxiously expecting to hear them announced, from day to day. It was not supposed that this communication depended on any contingency. Subsequently, we were told by the Chairman of the Committee on Foreign Affairs, that the information would be sent as soon as the Ministers to Panama were appointed, and money was wanted for their salaries. This information excited my surprise. That this great question was to be decided upon by this House, under the very limited restraint of a mere question for appropriating salaries for officers who have been appointed by the proper authorities of the Government. It was not to be expected that the question would be presented in such a shape.

It is pretty well known what kind of argument would then be used to sustain the measure. We should hear lectures upon our duty and moral obligation to vote salaries for all officers lawfully appointed. It did seem that the House was about to be drawn into a snare, though certainly without such intention by the Committee of Foreign Affairs. Their Chairman, as I now understand, only gave the information as he had it from the Department of State. Although this is a new case, and members will feel less of the obligation to vote the salary, yet, were it an ordinary exercise of an ordinary power, I should find great difficulty in resisting that obligation whether I approved of the service or not. The present case is, however, an exception to every other that can arise. But to proceed with the history of this measure: We suddenly found the whole matter taking a new direction. The Department of State had told us, through our Chairman of the Committee of Foreign Affairs, that the communication would be made only when the appropriation was wanted. Now a very singular change of position is exhibited; many, if not all of those acting with the Administration, determine not to make their issue on the question of appropriation, but become urgent for the information, in order to discuss the abstract proposition before the Ministers are appointed. Whether the members then acting, have changed their minds, or the Department of State has changed its purpose, I cannot say; one or the other has undergone a very singular change, and they may choose either horn of the dilemma. If the Department of State still thinks it inexpedient to make the communication before the appointment of the Ministers, this movement is certainly a countermarch on that Department; and, if the Department has changed, without notice to the Chairman of the Committee of Foreign Affairs, it leaves him in a very singular and awkward predicament. In whatever aspect we view

these sudden changes, they seem to require some special explanation; but for my own part I like the latter movement best; it matters little how, or for what purpose, it was brought about; and though late, it is better late than never. I care not how many changes and countermarches are made to reach this point. I trust the House will now say, let us have the information with as little restriction as possible, and then act upon the abstract proposition, not trammelled by any question of appropriation for salaries. But how is it possible that we can decide on the policy of this Mission without having all the information that belongs to it—nothing less than the Senate have, or the President himself? Why, then, insist upon this double restriction upon our call? I wish to know who it is that is most desirous of being fully informed on this measure, before we act, and the vote upon the amendment will present a test which cannot be misunderstood. The gentleman from New York (Mr. Wood) asked: Shall this House be restrained from expressing its feelings on this great question? If the gentleman had substituted *judgment* for *feeling*, I would have agreed with him. It is not feeling which ought to govern the House on such questions, but an enlightened judgment, seeking to advance the happiness, the honor, and the safety of our country; and in order to enlighten our judgment, we want all the facts, and, also to know what are the intentions of the Executive in relation to the Mission. It has been a long practice of the House to insert a qualifying clause in calls upon the President; but for this I would, so far as my vote would go, have asked for the whole, without limitation of any kind. Shall we go home to our constituents, and tell them that we voted without all the knowledge within our reach? They may well ask us, Why did you not call for it? And we should reply, with an ill grace, that we voted because the President recommended the measure; he knew all about it: but we thought it uncourteous to press him to tell us. We did intimate that we had some curiosity to know a little; but we told him to beware how he communicated too freely. We could not keep a secret; we had made up our minds to vote as he had wished, and we only meant to save appearances by making a call upon him. In fine, the we the Representatives of the people, in this branch of Congress, had agreed to become mere registering assembly for Executive edicts. Such would be our position; but I trust it has not come to this; that no doctrine of confidence in public functionaries will ever be carried to such lengths in this Government. It seems, however, from the debate, that many gentlemen have made up their minds to send Ministers to Panama. We, surely, need not address any arguments to these, to let us have information who have it not. It is to be presumed, they are fully informed as to all the facts necessary to a judgment. But one thing is clear: they must either have information which we have

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not access to, or have decided without knowledge, unless, indeed, they possess some intuitive faculty; but, in either case, will they refuse our request to be placed on equal terms with them? Our claim must appeal to their candor with stronger force.

I ask, is it fair or generous for them to exclude us from the opportunity of arriving at the same conclusions they have done?

But it has been observed that there is something peculiar in the time for pressing this restricted call. It has been conjectured, and some remarks which have fallen from gentlemen in the course of this debate go to justify the belief, that the singular change of position already adverted to, and the movement upon these resolutions at the particular juncture, was intended to act upon the *feelings* of the people and of this House, and react upon another branch of the Government, and cause it to "do quickly," what some gentlemen suppose "*well done* if it were done." Some politicians have supposed that the people feel first, and reflect afterwards; and if this were true, the time chosen for agitating this question, was well chosen for its purpose; there might be time enough to excite *feelings*, but none for *deliberate reflection*. But there is no greater mistake than this, as to the people of this nation. In every thing affecting their interest, and those of the nation, they *feel*, it is true, but with an acumen bordering on the unerring certainty of instinct itself. I have, therefore, no fear of the influence of declamation on their judgment; their good sense is beyond the reach of its power. I do not speak without knowledge on the subject; we have had some experience; I have witnessed the most extraordinary efforts to excite the sensibilities of the people, even on the affairs of South America, but it produced no such influence as was hoped and expected. Love of country, and a knowledge of their true interests, predominated; they saw these safe, and they remained calm. We have, also, had some experience on another question, more recently. Two sessions past, a proposition was made to counteract the Holy Alliance, by sending a mission to Greece; we had, on that occasion, all the declamatory eloquence of the Hortensius of the West, as he has been called in this debate, aided by the more argumentative powers of a gentleman from the East—but no effect produced, no rash feeling excited, either in this House, or elsewhere. The people were not disposed to do any thing that would, for a moment, jeopardize the safety of their country. The object, whatever it was, totally failed; the offspring came into the world still-born; it was put aside, not by the orators of the House, but by the middle men, the common sense—the men, as they are sometimes called, of five feet eight; the dead bantling had not even an undertaker to perform the last offices, nor any funeral ceremony; it was carried down to the bottom of the garden, and there buried. I know that this proposi-

tion was thought to be a great movement, having an ulterior purpose very different from its apparent one; and that it was resisted by the then Secretary of State, in a manner that merited the thanks of the country; but now the scene is changed, and projects and crusades are becoming more prevalent. It is well for us to consider whether we will, under any circumstances whatever, abandon, for a moment, the great policy of our country, viz: what has been called the American policy; that is, not interfering with the affairs of other countries; that policy which gained this nation its great moral ascendancy throughout the globe. It is one of the bases of our strength, which I trust will never be undermined by any unwise projects, or desire of exhibiting a splendid spectacle to the world. It would be well, also, to consider, whether, by sending Ministers to Panama, and assuming the relation, at least, of Quasi Allies, we do not, *prima facie*, abandon our neutral ground, and weaken the power which we might exercise more for the interest of the South American States, in the more commanding relation of mediators, whenever any difficulty should arise between them and other powers. We may honestly differ about the best means of advancing the interests of the South American Republics, but there can be no difference among us as to our wishes for their prosperity and happiness, to the same, and, if possible, to a greater extent than we enjoy these blessings. It is assuming too much, for the projectors and supporters of this Mission to Panama, to claim to be the exclusive benefactors of South America. The only difference is as to the means best adapted to the end; in estimating these means, we should consider whether the preservation of our own happiness and safety are not among the most essential. While this nation remains strong and firm, it will be a nucleus to which all free Governments will be attracted, and imbibe lessons of liberty and peace from our example, more efficacious than from any officious intermeddling with their affairs.

We have heard many conjectures about the objects of the mission to Panama; and unless other than these are intended, I think it more objectionable than at first blush it appeared. We are to make commercial treaties. What! with four or five nations at once, and yet no entangling connection? Could we not treat better separately with each, in the usual way? Do we know that it comes within the scope of their power to enter upon such negotiations? But we must go there to advise them—about what? Their religion! And is this a fit object for a *political* Minister? We undertake to interfere on matters which, perhaps, of all others, are regarded as the most sacred, and improper to be interfered with by another nation. Should our political missionaries attempt this, they might find a very different reception from that which some are perhaps expecting. It would be well for gentlemen to

advert to the dangerous consequences of an order by Peter the Great, for cutting off the beards of his priests. However desirable it may be to see our principles of toleration spread throughout that region, we must wait for the influence of pure religion, and the light of reason, and our example, to dispel, gradually, that cloud which hangs over these republics.

I should be glad to be informed what attitude our Ministers are to assume. It is said, by those who seem to know, (though we cannot tell how they know,) that they are not to be considered as members of the Grand Council. What then? Shall they debate, like our delegates from territories, but not vote? Or will they occupy the lobbies? Would this be a becoming position for the representatives of the first republic in the world? Or shall they figure behind the curtain, and make bargains with the individual delegates? Whatever aspect we can view the mission in, our Ministers will make a very awkward figure there; unless, indeed, we can get some information which shall remove all these difficulties.

Do we know what may be the feelings of those powers who have not invited us to be present? Are we sure that this partial invitation does not contain within it seeds of serious jealousy? I have seen an article, extracted from a South American paper, indicating an anxious apprehension, lest we might interfere too much in their affairs. Suppose that some of the States in this Union had invited our then ally to send a Minister to Annapolis, to be present at our arrangement of internal affairs, and the organization of our Federal system—what would the other States have said? Would it not have set the whole country in a flame, even if the Minister had been the great and the good Lafayette? Another object of this Congress, we are told, is to counteract the influence of the Holy Alliance in Europe. This is one of the most serious aspects in which this question is presented. We condemn the Holy Alliance, as well on account of its organization, as the means employed to effect its objects; not only we, but every friend of freedom throughout the world, condemn this combination of nations to effect the most unholy purposes, which, without such combination, could not be effected. Then let us consider whether our presence among the nations of South America would not so characterize that Congress, as to consecrate the means employed by the Holy Alliance. When means are thus made lawful by such a sanction, who can say they will not be employed for bad ends? It is yielding half the argument with which the Holy Alliance is everywhere so effectually assailed, for us thus to consecrate the means they employ, by participating in a deliberation of nations. But I have trespassed too long on the patience of the House. I trust the amendment will be adopted, and then, I am persuaded, the resolution will be almost unanimously supported.

Mr. STORRS said that he hoped the proposition to commit the resolution would not prevail, and asked the indulgence of the House, to say a few words. He would endeavor to speak, and confine his remarks directly to the question. This, said Mr. S., is a call on a co-ordinate branch of the Government for information. It is upon the Executive, who is charged by the constitution with the management of the foreign negotiations of the country. It has been confided to him, because it would have been unwise to have lodged it here, at least. Now, that comity which should ever characterize our intercourse with the Executive, has settled, long ago, that respectful form which every call for information from that co-equal department has usually assumed. Gentlemen who now press upon us so earnestly a change of this settled, and, certainly, courteous, usage of the House, should come prepared at least with some solitary precedent, from the whole history of Congress, to justify it. If no such example can be found, they should then, in my opinion, at least, clearly show us that the present is an extraordinary or alarming occasion, and calls upon us to adopt some uncommon and vigorous measures to meet its dangers, and that the call, as proposed to be amended, by the gentleman from Pennsylvania, (Mr. INGHAM,) was indispensable, to enable us to discharge our proper constitutional duties. Now, sir, what is really the case before us, which has excited so much alarm—which is pressed so earnestly upon us, as a crisis of imminent danger to the country? If we go back but a few steps, and examine what information we already have, we may perhaps find that all these fanciful dangers are chimerical. The resolution now asks for such information, in relation to the Congress of Panama, and the objects of our own Government, in uniting in its deliberations, "as the Executive thinks may be safely and prudently disclosed to us, at this time," by that branch of our Government. If I have understood gentlemen correctly, they wish this reference to the discretion of the Executive expunged. They see in this mission, or believe they see in it, a most alarming probability that we are there to become parties to a confederation, which has for its end and object resistance to the Holy Alliance—an alliance offensive and defensive, against Spain, or Europe, or some of the kings of Europe—that the Executive is about to compromise the peace, happiness, and prosperity of our country, on some wild schemes of interference between these South American States and Spain. In short, that we are to unite our political relations with theirs; that we are to be hurried into a ruinous state of public war with Spain, or some other powers of Europe. We are, for these, among other minor reasons, urged to make an unlimited call for all the information in his possession, without any restriction which may suggest itself to the Executive as growing out of the extreme delicacy which always at-

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tends every diplomatic arrangement of the country. Unfortunately for the conclusion which gentlemen have drawn from these imaginary sources of alarm, the Executive has already plainly informed us and the country, in his message at the commencement of the session, that the United States will not become a party in any deliberations or measures at the Congress of Panama, which may compromise our neutrality.

If this be so, we may at once dismiss our fears, and, with them, nearly all the arguments we have heard, unless we are prepared to go a step further, and deny that this information is satisfactory: for we can learn no more than this, after all which we acquire in the end by any resolution. It must come from the Executive at last; and if we cannot rely on this declaration, thus solemnly made to us and the world, will gentlemen profess any greater faith in any thing which he may send to us, in answer to a call from the House? It does appear to me, sir, that, unless we disbelieve the President on his word, we can have nothing more satisfactory. His object is here explicitly declared, and voluntarily placed before us, on the very point which we seem to desire, with the most anxiety, to be satisfied about. I am not disposed, sir, to deny that a state of things may, by possibility, occur, in the history of the country, in which this House may not be justifiable in demanding information; but it is not necessary to express any opinion on that matter. It is enough for us to know, on this occasion, that there is nothing now before us, and nothing in the attitude of the subject, or as connected with it, which should at all discompose our minds, or disturb our tranquillity of feeling. The country will hardly be exposed to any disquietude, nor need we be, after this very explicit assurance of the President as to our strict neutrality between these States and all other powers. What, then, can be the wonderful mysteries of this Congress, so far as it is proposed that we shall be concerned in its deliberations? If it is neither of war, nor alliance, nor interference with other powers, it must necessarily relate chiefly to commercial arrangements; and if we will but look a little after the great interests which our commerce and navigation have in the subjects so likely to come before that Congress, we may, perhaps, find that its deliberations are worth the attention of our own Government, and be able to allay in our minds all the causeless alarms which have been spread out in this debate. If we are satisfied on these points, are there any of us, then, who can regard this question as different from a call for information on any other commercial negotiation about to be instituted? It would, in my opinion, be extremely unwise to call for an absolute development of all the objects which we may have in view at that Congress. No prudent Government could wish to have them disclosed to the world; and as our Ministers cannot, from the very

nature of their powers under the constitution, bind us to any thing whatever, even in commercial arrangements, we have a full security, in the supervisory power which both the Executive and the Senate subsequently exercise over all their acts, that there cannot be the remotest danger in the mission. We may, at least, feel some assurance that both these branches of the Government will not lightly compromise the advantages of our neutrality, or expose us to any very imminent dangers whatever. If the Executive were even disposed to hazard any thing, another branch of the treaty-making power still holds them in check; and after all, our own co-operation may be called for to execute the measures which may grow out of any treaties to be made at that Congress. But I will not enter into this branch of the subject, lest I may be considered as digressing from the question. It is only pertinent to the debate, to show how unnecessarily alarms may be excited, and how causeless these alarms may prove to be. We must come to the conclusion thus early on this subject, that we cannot trust the Executive at all in the ordinary exercise of his constitutional duties, or we must take his declaration in the message as satisfactory. Whether he has or has not nominated to the Senate Ministers for this mission, we know not, nor is it necessary for us to know. Of as little importance is it to us to know, on this question, whether, if he has, the nominations are confirmed or not. We may have a plain duty to perform, whether the Senate approve or reject any such nominations. We cannot, and I trust will not, at this time, take into our consideration any thing not directly before the House; and when the time shall come that a proposition shall be presented to us for an appropriation for this mission, we have only to do our duty, and to take upon ourselves our own responsibilities, regardless of the views which others may entertain of it elsewhere.

Mr. HAMILTON said, that he would abstain, he hoped, from indulging in any discussion as to the general merits of the purposed mission to Panama: for he humbly conceived that those gentlemen who had given so wide a range to the debate, had violated the propriety of debate, if they had not the rules of Parliamentary order. He would, therefore, endeavor so to confine himself to the subject matter before the House, as not to furnish his poor example, valueless as it was, as a refutation of his own doctrine.

Indeed, he proposed merely to say a word or two to the gentleman from New York, (Mr. STORZA,) who certainly had evinced a most extraordinary and instinctive confidence in authority. This gentleman has given us a new reading to the maxim of the British Constitution, "that the King can do no wrong;" and has pushed this doctrine even beyond the limitation which it is safe to urge it in England: for I infer from what he says, that he not only

believes the President can do no wrong, but his Cabinet counsellors also. It seems, because the President (with these his chosen advisers) has said that the invitation to join in the deliberations at Panama has been accepted, in such a way as not to affect the neutral relations of the country, we are bound to take this as a matter of implicit uninquiring faith, and to be satisfied it is so, because the President has so assured us. This was, indeed, giving to this distinguished personage, said Mr. H., an infallibility which it does not suit, at least my loyalty, to impute.

For my part, I wish to see the authority on which the President has made this assertion; in what way our neutrality has been guaranteed, and by what nicely adjusted contrivance of diplomatic ingenuity he has made that neutral, which bears on its front a flagrant violation of our pacific relations. The assertion of the President might be consoling enough to the gentleman from New York, but I confess I should like to deduce this security for my country, from the facts incident to the invitation, from the documents and correspondence between the South American Republics and our own Government, and, if possible, from the powers which may be given to our Ministers. In this view, how exceedingly pertinent is the amendment of my friend from Pennsylvania. Its peculiar fitness and propriety must be acknowledged by all, except those who are willing to accept a modicum, at best, and to take all the rest upon trust.

But the gentleman from New York obviously entertains the opinion, that, although the primary and leading object of the Congress may be to deliberate on the most effectual means of annoying Old Spain, we can, nevertheless, participate in these most *pacific* deliberations with perfect safety—if we only make a timely protest of our neutrality! He seems to have forgotten, with all his knowledge of the sessions, the penalty of those who unwittingly keep riotous and bad company. I will propound a case for the professional consideration of the gentleman. Suppose, in the village in which he lives, there should occur one of those things which, in my country, we technically call a *row*, in which divers breaches of the peace should be made, some hard blows given, and some blood spilt. If, in the midst of this affray, one of the gentleman's clients should come up, and ask him for a legal opinion, "whether he could, with safety, take part in these deliberations?" Would the gentleman reply—"yes, with perfect safety, provided when you get fairly into the thickest of the affray, you lift up your hands and make proclamation of your neutrality." No, the gentleman from New York is too sagacious to give such counsel. He would tell him to "take himself home, and mind his business, if he loved peace and whole bones; that a man caught in the fact of cabaling and confederating among rioters, must take the belaboring a court of justice is apt, in these cases, to decree."

Whether the declared objects of the Congress (in the event of our participation) did not put us in the penal condition of those who associate, after full knowledge, with rioters, was a point altogether aside from his present purpose to discuss, although, he apprehended, if such was his object, the conventions and State papers of the parties would bear him out, not a little way, in deducing such a conclusion.

For my part, said Mr. H., I frankly confess that I wish to see, if, by lending our countenance to a Holy Alliance on this side of the water, we are to be put on worse terms with the Holy Alliance on the other; as it happened that some of the members of the latter owe us money. Our merchants have claims upon them. I wish to ascertain whether this volunteer, in behalf of South America, will coax France and Naples into a better *paying humor*. Let us, then, have all the information which can tend to show how one Holy Alliance is to be arrayed against the other.

Mr. WEBSTER then rose. The honorable gentleman from Pennsylvania has said, that the present call on the President for the correspondence in relation to the Congress at Panama, reminds him strongly of a resolution I once had the honor to submit to this House. That case and this, are, in that gentleman's sober, close and tenacious judgment, very closely connected. The gentleman says, that my resolution "was still-born; that it had no funeral, no undertaker; and that it was carried out and buried at the bottom of the garden." But, sir, so far as I recollect, we had not the pleasure at that time, of hearing from the honorable gentleman. The gentleman himself seemed then to be as still as if he himself was dead and laid at the bottom of the garden; and ever since the gentleman has been as much under a cloud as my resolution itself.

As to the gentleman from South Carolina, who has just taken his seat, he embarrasses me exceedingly, as I always am embarrassed when I have to decide between two opposite propositions of one and the same gentleman. Sir, the very clause proposed to be stricken out, was in the gentleman's own proposition, as he presented it himself to the House. In now inserting it, I am but the humble imitator of that gentleman: he put these words in his resolution, and, through all the processes of repudiation or adoption, or both, I have never heard till now that he thinks them wrong. The honorable gentleman must pardon me, therefore, sir, if I take the liberty of thinking that his *first* opinion was right; nor can he take it as hard that the House should be in favor of his own proposition, and against the amendment. The ground on which the words in question were, and still ought to be inserted, is, that such is the ordinary, and, I believe, the invariable practice. We shall certainly, sir, manifest a most extraordinary want of confidence, indeed, in the Executive, if we send this resolution to a select committee, with instructions to strike out the

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clause which leaves it to his discretion to judge how much of the correspondence may be communicated without detriment to the public good. Sir, do we doubt? Do gentlemen sincerely feel any doubt, and do they wish publicly to express any doubt, that the President will deal fairly with us? If gentlemen do not wish this, the words of the clause are unquestionably proper, and ought to be inserted.

Mr. Cook said, it struck him, that the honorable gentleman from Pennsylvania, in submitting this motion, did not perceive, what he thought must be most apparent, that it would defeat that part of the resolution which that gentleman was willing to adopt. The object of the first part of the resolution is, that the President of the United States shall communicate to us such correspondence between this Government and the Governments of South America, touching the objects and designs of that Congress, as will not be *inconsistent* with the public good to communicate. And why had we adopted any discretionary clause in this part of the resolution? First, because it was the usual mode, and because the Congress of the United States, in making calls of this character, look on the President as responsible to the people of the Union, having the same interest at stake, and responsible in the same manner that we are to the people; and that he will, therefore, communicate to us all those circumstances proper for us to have, and which it is not inconsistent with the public welfare to communicate. And, secondly, it is predicated on the supposition that the President will do his duty. We call for information as to the objects and views of this Congress at Panama, and leave it to the President to exercise his discretion, in withholding from the public such parts of the correspondence as had passed between him and those Governments, which could not, in justice to those Republics, be published; they did not suppose, when they corresponded with us as friends, and placed confidence in us, that we would betray any of their secrets entrusted to our keeping, by publishing any thing that it was improper for the world to see. On this second ground, Mr. C. said, the discretionary clause in the resolution must be based. What would be the effect of expunging that part of the resolution which was sought to be expunged by the gentleman from Pennsylvania? It would tend to deprive the Executive of the exercise of this sound and wholesome discretion, of withholding from the public such portions of the objects our Ministers are to be instructed to accomplish, as would not be proper to be communicated, and which it would be doing an injustice to those Governments to publish: for, after we had been furnished with all the information touching this subject, in giving the information sought for by the honorable gentleman, if there was any thing in relation to those Governments which ought not to be published, the President must, necessarily, if he felt bound by the resolution, dis-

close it to us. By this proposed amendment, we say in one breath you may save the secrets of these Governments; and in the next breath you say, they shall come out. There would be, he thought, an inconsistency in the resolution; if any part should be expunged, the whole should be expunged; they were so closely connected, it was impossible to separate them.

But, Mr. C. said, this was a new feature in this resolution, as was said by the gentlemen from Massachusetts and New York. It implied a want of the usual confidence which the people and the Congress of the United States have always placed in the Executive of this country. It implies a belief that he will not do justice to this House, or in good faith discharge his duty. Was there any thing, Mr. C. asked, in the nature of things in the situation of that officer, or in the situation of the country, to justify such an apprehension? Was there any thing in the situation of that officer, either personally or in relation to the people of this country, that would justify it? He thought there was not. What is it that he has informed us? That he has accepted an invitation—not that he is disposed to press into this Congress—but he has accepted a friendly invitation for the appointment of Ministers to join it, and in due time he would call on this House to give its aid; and it was most probable, it was reasonable and just to believe, that, when the President asks us to furnish him this auxiliary aid, to carry his design into execution, he would furnish us with all the information which he might deem necessary to do justice to the subject. He believes that the appointment of these Ministers will have a salutary effect on the public interests of this country; and, in accomplishing that purpose, he knows that he must have the aid of this House, and he will furnish with all the light, with all the information, that he thinks necessary to guide us to a just decision on the subject. Should we not be satisfied, we may withhold the appropriation: for the constitution has placed this defeating power with the Representatives of the people.

There was nothing, Mr. C. said, to justify the opinion that any bad faith was intended; yet this proposition itself implied a belief that the Executive intended to act with bad faith towards us. When this proposition was first made, we were informed that this information would be furnished in due season—and what was its situation then? The Executive, conceding to the invitation, proposed to nominate to the Senate Ministers to this Congress. It appeared from his message, that, having made up his mind on the subject, he intended to make a speedy nomination, and the subject-matter may be depending before the Senate; and, if this is the fact, it might be the reason of his not sending a message to this House. But we are told we are to be called on to act on this subject. The season is advancing, and gentlemen say, on all sides, this is a very im-



portant subject; but we don't wish to stay here till January next, to decide this question; we want information on which to act.

Mr. O. said he had reason to entertain the expectation that this communication would be made voluntarily, in due season, by the President; and yet there might now be circumstances, which, in the exercise of that comity which ought always to subsist between him and the other branch of the Executive, would forbid it; and yet those circumstances might not be, as he thought they were not, entitled to any weight here. We have to act, and are entitled, when we desire it, to information. The gentleman from Pennsylvania, Mr. O. said, in aid of the argument which he had advanced in the House, to show that there was an intention to operate on the public feeling, had thought proper to refer to a subject of a former date. Mr. O. remarked, on that subject, that he was not aware that it was intended, as the gentleman had intimated, to have some operation on some great political movement. I know of no such design, said Mr. O., but perhaps the gentleman is more fortunate than I am; yet I ought to be supposed to understand the motive of the proposition, seeing that I advocated it. I was not governed by any consideration of that sort. I was governed by my convictions, founded on such information as I had, that the measure was a proper one, and that we were doing in that instance nothing more than had been done to the Governments of the South at a former period. If I was in error, it was an error of judgment and not of intention.

In relation to all this matter, touching the effect it was to have on the Holy Alliance, and on the interests and peace of this country, which had been so much dwelt upon in this debate, on a mere call for information, Mr. O. said he should not venture to form any opinion till he was in possession of the necessary information as to the nature of the Congress, and the objects to be attained by sending our Ministers there; then he would carefully examine the subject, as one determined to act rightfully, and if he found that any pernicious effects were likely to result, then he should vote against making any appropriation. Let them have the information, and then they should proceed to deliberate on the subject fairly and calmly, and free from any other feelings than those which influenced men devoted to the interests of their country. He thought it was not entirely wise to make up an opinion in the dark; it looked like prejudging the matter; and after gentlemen had expressed opinions on the main question, either one way or the other, they were not likely to be so open to the influence of reason as if they remained free and uncommitted. He thought it was due to the subject, and eminently due to themselves, that they should, when all the facts were before them, be free and unprejudiced on the subject. To be so was indispensable, in order to arrive at a just conclusion on the subject.

Mr. SPRAGUE said he did not rise to discuss the subject of the Panama mission, under the present motion, but because the question before the House presented itself to his mind in a different view from that which other gentlemen had taken of it. The gentleman from Pennsylvania, (Mr. INGHAM,) the mover of the amendment, has told us that the question is, "Shall we have more or less information?" Is it? Why do we *request* the President, instead of directing or commanding him? Is it not because we have no right to command him; because he is as independent in his sphere as we are in ours? He is bound to execute his high trust in the manner which, in his sober judgment, shall best conduce to the interests of the nation. Suppose, then, we request the President, in the most unqualified terms, to send us all the information; and he, with the whole before him, shall firmly believe that, to disclose it, would be of essential injury to the public interests; violate our faith to foreign nations—would he not be bound, in the discharge of his duty, to withhold it? If, then, the President shall perform his duty, and I firmly believe that he will, conscientiously and independently, the same information will be communicated, whether the qualifying clause shall be stricken out or not. The extent of information to be obtained does not depend upon the terms of the resolution. Still I do not consider the phraseology a matter of form only; and if it did appear to be so, it would not be wise unnecessarily to depart from the established forms of official intercourse. Such a deliberate departure, at this time, must indicate something—I need not say what I apprehend that the clause now proposed to be stricken out, was originally adopted by the members of the House, not only because it was respectful to the Chief Magistrate, but, also, out of respect to themselves. They were unwilling to make an improper request. They would not subject themselves to the imputation of asking the President to do that which it might be his duty to refuse; they, therefore, used such language as restricted the request within its proper limits, and left to the Executive the free exercise of his legitimate powers. Why should we now depart from a precedent so long established? It is answered that this is a new case. The same may be said of every question under any new circumstances. If this identical case has not before arisen, there have been many so similar and analogous as to govern the present. This refers only to our foreign relations, and missions deeply affecting those relations have been of frequent recurrence. Again, it is said that we should disregard precedent, because this is a subject of transcendent importance. If the view which I have taken be correct, the importance of the proposed mission has no bearing upon the question, since the extent of our information will not be affected by the amendment. But, is this a matter of such unparalleled importance? Was there never a case of equal magnitude in our history? It is said we

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were about to change our national policy. Of this I can see no evidence, and do not believe it. If it were so, is the question, whether we shall change our policy, of greater magnitude than was the original question, whether we should first adopt it? When, during the late war, Commissioners were empowered to negotiate for peace, and form a treaty which might affect all the vital interests of the nation, was it a matter of less importance to us than the sending of Ministers to Panama? I cannot consider this a subject of such overwhelming magnitude as gentlemen have represented it. I see nothing in the present conjuncture, of that imperious necessity which disregards all law and all precedent: and believing that the proposed amendment will produce no good, but much evil, I shall vote against it.

Mr. MITCHELL, of South Carolina, said, that, in some respects, he considered this amendment in the same light with the gentleman from Maine. He held, that each branch of the Government is responsible for its own acts, and each had its own distinct rights and powers. The Executive is possessed of the information which is asked by this House; but, if he does not think proper to communicate it, he has the right of refusing. The amendment, therefore, in its effect, must be perfectly nugatory, and, in that view, he was unwilling to vote for it. But, Mr. M. said, there were two points of view in which he considered the amendment as highly necessary. The first of these had respect to the honorable mover. That gentleman wished that the resolution should be referred to a Select Committee, that the discretionary clause might be stricken out. Now, as it was a matter to Mr. M. of entire indifference, and would, in effect, be the same, whether the clause was stricken out or not, he said he would vote for the reference, out of respect for that gentleman's wishes. But there was another ground, on which it might be proper to strike out this clause. Doing so, might have a tendency more fully to express to the President what are the wishes of this House. It would manifest that the House is desirous of having all the information which pertains to the subject. And for his own part, Mr. M. said, he was free to confess that he would not vote for this mission, unless he was fully convinced that he had all the information respecting it, which the Executive has. What is it (asked Mr. M.) that we require? In the first place we ask for the whole of the correspondence which relates to this invitation; and is there any member of this House, who will be willing to vote an appropriation for the mission, unless he has the whole of this correspondence before him? We ask, in the next place, to be told what are the objects of this Congress: and will any member vote for the mission without knowing them? We ask, what are to be the powers of the Ministers who are sent: and will any gentleman be willing to vote an appropriation to send them, who does not know what is to be the extent of their pow-

ers? Whoever may be willing to do so, I am not. It is very true that we have no right to demand these instructions from the President; but it is also true, that I will not vote without them. And this, I think, is the precise limit of the respective powers of these two branches of the Government: that the President of the United States may refuse to communicate to this House, the information it asks respecting this mission, and, if he does, the House of Representatives may refuse to vote for the appropriation for that purpose. Sir, I absolutely disclaim all opposition to this mission. I do not, as yet, know what are its specific objects; and I surely, therefore, cannot be opposed to them. A gentleman from Louisiana (Mr. LIVINGSTON) has represented it as a measure founded in a great and enlightened policy—if it be so, none will be more delighted to see it prevail than I shall be: for I will support any Administration which acts on such policy. But, if it is a measure fraught with all the direful and disastrous consequences predicted by the gentleman from Virginia, (Mr. FLOYD,) may God give me power to resist it with my life. I certainly would not wilfully show any disrespect for the President. I should consider it unworthy of my own character, as well as unworthy of this House, to do so: but I wish, from the sincerity of my heart, that the President may send us the whole of the information we desire—and I shall vote for the amendment.

Mr. FORSYTH did not attach any consequence to the proposition of the gentleman from Pennsylvania, so far as it could practically affect the information to be procured. The subject was of such a character, that it *must* be the duty of the President to give the House the fullest information. In presuming that this would be done, Mr. F. only presumed that the President understood, and would do his duty. While he considered the amendment proposed of no immediate practical consequence, yet, as a matter of principle, he was in favor of it; and he rose chiefly to remove the impression made by the very imposing, but, as he thought, very inaccurate statement of the gentleman from Massachusetts, (Mr. WEBSTER.) The gentleman presented the subject to the House as if it were precisely the question presented by the resolution of the gentleman from South Carolina, in which it is alleged the words referring to the discretion of the President, were introduced. The resolution now before us embraces two distinct calls. The first, like that of the gentleman from South Carolina, for correspondence, or parts of correspondence, in relation to the Congress of Panama. The second, altogether different: for an explanation of the objects the President has in view in accepting the invitation to send Deputies to that Congress. So far as regards the first part, the statement of the gentleman from Massachusetts was perfectly accurate. The discretionary words were proper in both, and no motion has been made to strike them from the resolution before the House. The motion is to

strike them from the second part of the resolution, into which they had been carefully introduced. The gentleman alleges, as the reason for their introduction, that it is usual, according to ordinary forms, in such cases. This is certainly incorrect. The occasion is extraordinary. The call, like the occasion, is extraordinary. The ordinary rule cannot properly apply to it. Similar words are found in ordinary calls for diplomatic information—not that their introduction is courteous to the Executive Magistrate, but because the House well knows that the correspondence of our Ministers, with their own and foreign Governments, necessarily contain various matters and allusions, the disclosure of which would be injurious to the public interest, and could not be useful to the House. We do not ask for instructions from our Government to our Ministers, because they necessarily contain the details of the manner in which our wishes are to be obtained, and contain also a statement of all that we want to accomplish, and the least that we will be satisfied to obtain. Another reason for not *usually* asking instructions is, that we cannot, except in extraordinary cases, make any constitutional use of them if they were presented to us. The reference to the discretion of the President, is not matter of courtesy, but of utility, and regulated by the answer to the simple question, can there be any proper motive for withholding any part of the information desired? There is none. There can be no want of courtesy presumed from the omission of the words proposed to be erased. What injury can arise from an explanation of *all our* objects in going to the proposed Congress? Mr. F. had tasked his imagination in vain, to discover what legitimate object could be contemplated that might not safely, and ought not properly, to be disclosed to the House. He took it for granted, that the invitation to us to attend, explained the objects of the powers who gave it, in desiring us to be represented; and also, that the acceptance explained our objects in consenting to be present. Supposing any thing to be omitted, the first step of our Deputies, on their arrival, would be a disclosure of what we desire to know—the objects of their deputation. The disclosure *now* cannot be injurious in its effects, since all that will be known to us, is already, or will be, immediately, known to the other powers. If we intend to make commercial treaties—and this occasion is deemed propitious—this might be stated without injury to us or to our neighbors.

Mr. WEBSTER said, that he rose to offer a few remarks in reply to the observations of the gentleman who had just taken his seat; and, in doing so, would endeavor, as nearly as he could, to follow the course of those observations. The gentleman, it would seem, admits that the amendment under consideration, is not likely to be of practical importance in the present case; but he supports it on the ground of pure principle. Well, sir, on the ground of principle, then, I consider it as of importance

that this House, when it calls at all for papers should make the call with the usual reference to the constitutional discretion, which belongs to the President of the United States, and subject to the limitation which that discretion may dictate. The gentleman says, that I have not stated the case accurately in respect to the history of this motion and its original shape: and that, although at first, the insertion of the clause might have been very proper, yet now the ground is changed, and it has become improper; and that there is no precedent to support it. And the gentleman bars all inference from cases merely analogous, and calls for a precedent that shall be identical with this case. He forewarns the House against being misled by a lawyer's argument, from analogy. Doubtless, sir, this would be very convenient to the gentleman's argument; especially if it be coupled with his other position, that the case is new. If no precedent deserve regard, but one to be found in precisely such a case, or the same case, and if no such case exists, the inference is very easy, that there is no room for the influence of precedent. And if the premises be true, the inference would hold always, and in all cases: for no two are exactly alike. But that plain rule, which the gentleman calls a lawyer's argument, is somewhat in his way. This teaches us that precedent is applied from one case to another, not where the cases are precisely the same, but where the principle is the same. In other words, that a just and proper analogy is fair ground of argument.

Now, sir, in this case, a resolution has been introduced, requesting certain information, or certain correspondence, on a subject affecting our foreign relations, to be communicated, with the insertion of the usual clause, leaving it to the discretion of the Executive to judge how far such information or correspondence could be communicated, without injury to the public interests. To this resolution, the House has now added, in substance, a new paragraph, requesting other and further information, on precisely the same subject; and, as matter of course, I added to this second call, the usual words of qualification.

Both paragraphs respect our foreign relations: both respect the same branch of those relations: both respect the same identical subject. What reason, then, can there be for striking out the qualifying words in the last paragraph? This is closer than common analogy: it would seem to be, as nearly as possible, the same case; the two calls are but parts of one call, on one subject. My argument is, that, being introduced into the first resolution, (now the first branch of the present resolution,) they are equally proper in the added part, (or that which is now the second branch of the resolution.) How is it shown that the qualification is proper in one part, and not in the other? Suppose this were the case of an ordinary mission, (and, in principle, it is the same thing as if it were any of our missions to Eu-

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rope,) I ask, would it be constitutional, in this House, to ask the President to disclose, particularly, and without reserve, all the objects he had, at a given time, in view, in that negotiation? Surely not. It cannot be pretended. But the gentleman tells us that, as the latter part of the resolution asks for more than is usual, it is, on that account, not to be made subject to a discretionary clause. Now, sir, to me, this appears to be an argument for directly an opposite inference. I think that, for that very reason, it ought to be subject to, at least, all the usual qualifications. If the call, itself, be for more than is usual, it is a stronger case than usual for the qualifications.

I agree, sir, that it is very desirable we should have all the knowledge on this subject which we can properly possess: but the question is, whether we shall not make the same reference to the Executive discretion, in this, that we do in all other cases? It is said, we must not; but that we should call for the entire correspondence, and all the objects, specific and in detail, of the Congress, and all the powers of the Ministers who are to be sent there. Sir, the President may have the best reasons for withholding these, or some of them. It is very probable that, in the progress of events, his own views may change, with changing circumstances. New relations may arise: and whenever any such changes happen, is he expected to come again with his objects, and his details, to this House? The gentleman himself admits, that the omission of the clause will do little or no good, as to obtaining what we want for the present occasion. I hope, then, we shall not set a general precedent of this character. In one respect, I agree entirely with the gentleman: it is when he says, that, after all, it must remain discretionary with the President to make a full communication or not. But, sir, who doubts that the President will make the communication, and that he will make it as full as can be desired? Is it not his interest to do so? Must it not be his desire to do so? Must he not know that in this, as in every thing, he can only stand firmly, while he stands on the enlightened approbation of an enlightened people? Dares any man doubt that the President is as willing to shed light on this subject, as the humblest citizen can be to receive light? The gentleman says, it is recommended to repose *implicit* confidence in the Executive. Sir, I have not heard it recommended, by anybody here, to repose implicit confidence: I have only heard it said, that we ought to repose the *ordinary* confidence which we repose on other occasions, and that we ought not to exhibit extraordinary diffidence. I object only to unreasonable jealousy, and premature suspicion. Let us go on, then, with the call, in the ordinary manner. I only repeat what I said early in the debate, that I act, and mean to act, without the least reference whatever to the manner in which others, in another place, may perform their duties. I

look only to the duty incumbent on us, on a subject of high interest, and on which this House has a right to the information which may conduct it properly to the end of its deliberations.

Mr. POWELL said he was opposed to the resolution of the gentleman from Pennsylvania, and he should have contented himself with giving a silent vote in opposition; but, from the course which had been adopted by gentlemen, during the discussion of this subject, and the extensive range of argument in which they had indulged, involving the policy of the Panama mission, it might probably be inferred, that, by voting in opposition to the resolution of the gentleman from Pennsylvania, and the original resolution, he should be considered as pledged in relation to his final vote on the subject. To rebut any such implication, he now rose to detain the House a few moments, and to assign the reasons for the vote he intended to give.

The original object of the resolution moved by the gentleman from South Carolina, (Mr. HAMILTON,) and the object of the amendment proposed, and now adopted, by the gentleman from Massachusetts, was to obtain such information as would enable us to proceed to the investigation of the subject of the proposed mission to Panama, and to act understandingly and correctly on the subject.

Mr. P. considered the whole course of the discussion, as to the policy of this mission to Panama, as premature, and unconnected with the real question which had been submitted to the consideration and determination of this House. The object of the resolution, he repeated, was to procure the necessary information to enable the House to understand the important question as to the policy of the recommended mission to Panama. It is evident, he said, that it was premature to go into such a discussion, without the lights to be calculated upon from the information the resolution asked for. Mr. P. asked what would be the practical effect of the proposed amendment of the gentleman from Pennsylvania? Would it afford to this House any further information than the House could or would derive from the Executive department, under the resolution as it now stands? By what process of reasoning could the gentleman bring his mind, or the minds of this House, to the conclusion that they would derive more information by giving the resolution a shape such as he contemplated, than by suffering it to remain in its present situation? The proposed alteration is only calculated to be operative as it implied a want of confidence in the President of the United States. It could, in fact, have no useful effect, except in reference to a dereliction of duty in that officer, if it could even have effect in that aspect: and although, Mr. P. said, he was not disposed to yield himself up implicitly, in relation to confidence in the President, or to pin his faith upon the head of any department of the Gov-

ernment, yet he was not disposed to withhold that confidence, unless he was warranted in so doing, by some information, or some fact, calculated to diminish reasonable and proper confidence. Was this House prepared now to say, that, by an official act of the President of the United States, he has justly forfeited that confidence which was due to him, and which ought to subsist between the co-ordinate branches of this Government? If any circumstance had taken place, which would warrant such a conclusion, Mr. P. said it had not reached his ear. So far as the President stands in relation to this House—so far his course had been of that character as not to destroy a reasonable and fair confidence in him. Thus, Mr. P. said, the necessary effect of the proposed amendment would be, to imply a want of proper confidence: because, if the President acts with good faith, the necessary result would be, that he would, upon the call recommended, communicate all the necessary information. It would only be in the event of his acting in bad faith, that he would withhold it—provided the safety and interests of the nation did not require him to do so. Surely such would be his course. If he should not act with good faith, could the House, or the gentleman, by giving his shape, or any other shape, to the resolution, make him observe good faith? No. If he were disposed to withhold the information from the House, or if he were disposed to make it his duty to the House, and its call, or to the nation, they could give no shape, however imperative it might be, to any resolution, to drive him from his course, and to act with good faith.

Mr. P. said he had no apprehensions that the President would not observe good faith to this House, in relation to this matter, and he hoped, sincerely, he should be able to say so hereafter, as it regarded every other great and important interest of the nation. If in this hope he should be mistaken, he should not be silent. Mr. P. repeated, that the proposition, if important, must be based on a want of confidence in the good faith of the President. If he acts with good faith, we shall have all the information he has, if it be safe and proper to communicate it, under the resolution as it now stands. He is a co-ordinate branch of the Government. His power to exercise discretion in this matter, is sanctioned by the example of Washington, and, in the exercise of that power, he will give or withhold information, whatever shape we may give the resolution, or whatever language we may employ. If we give the peremptory aspect to the resolution, that was asked by the gentleman from Pennsylvania, would his object be more certainly attained? Mr. P. said, no. It could not alter the result, in any aspect in which he could view the subject. The President would either give or withhold, in reference to his own judgment, any portion of the information that he may think proper, in the exercise of his con-

stitutional power. If the President, in violation of his high duties, intended to withhold from this House any information in relation to this subject, or any other, he should despair of removing the difficulty by the amendment proposed, or any other amendment that human ingenuity could shape or devise. We shall get the same information precisely, whether we adopt or reject the amendment: and, being worse than useless, he should vote against it.

Mr. DRAYTON observed, that it was certainly a subject of deep regret that so much time should be occupied by the discussion of a question like that which now occupied the House. For himself, he conceived that, as to substance, there was little difference between the resolution, as proposed to be amended by the gentleman from Pennsylvania, and as already amended on the motion of the gentleman from Massachusetts. But, two resolutions might differ very little in substance, and yet greatly vary in their import. The introduction of a single word, though it might not change the sense of a proposition, was often sufficient to present it in a different shape, and, by overloading a resolution with exceptions and provisos, if we do not entirely destroy its substance, we may greatly weaken its effect. Whether provisos were repeated ever so often, or whether they were not inserted at all, the practical result would be the same; because, let us put the call in the most imperative form we can conceive of, and let us insert into it a requisition for every document and paper, and for every species of information which can be imagined, would not the President, when he makes the communication, withhold such documents, papers, and information, as he supposed the public good required should not be communicated? No difference, therefore, as to the authoritative effect of the resolution, would result from agreeing or not agreeing to the motion of the gentleman from Pennsylvania. But there was another view in which this became of some importance. It is certainly proper that this call should be so framed as to show to the President whether we are anxious for this information or not; and to him it appeared that, if the proviso should be repeated in the resolution, the House would seem to express to the President that they wish him to be particularly careful as to the extent of his communication; and in this it appeared to him that the great difference consisted between the amendment of the gentleman from Massachusetts and that proposed by the gentleman from Pennsylvania. If the former prevails, the Executive will perceive, on the face of the resolution, that the House feels lukewarm on the subject, and is disposed to furnish him with pretexts for not fully giving the information. But if the call is to go in the unqualified form desired by the gentleman from Pennsylvania, no such inference can legitimately be drawn.

In the course of this discussion, several remarks had been applied to his honorable friend

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and colleague, (Mr. HAMILTON,) who was not now in his place, in which he did not think that gentleman had been fairly treated. The resolution had been called his, and the gentleman from Massachusetts had said that his honorable friend had alternately adopted and repudiated his own offspring. But how had his colleague done this? Was it not from the first manifest, that, owing to causes which his friend, with his usual candor and frankness, had stated to the House, he did not think the House ought then to pass the resolution? A similar resolution was afterwards offered by another gentleman, and the question being put whether the two resolutions were not in substance the same, the Chair had decided that they were. And, with the consent of the mover of the latter resolution, the resolution of his colleague was considered before the House. What then was the conduct of his honorable friend? So little desirous had he been of being considered the author of a resolution which he had not pressed, that he wished to withdraw it, and suffer that of the gentleman from Kentucky to take its place. But this course was forbidden by a rule of the House. He was therefore obliged, by circumstances, to consider as his own, a resolution which he did not press, and which he, in fact, desired, should not, at that time, be considered. Now, every gentleman must know, that there was often as much consequence in the time at which a resolution is offered, as in the form which may be given to it. Various amendments were afterwards introduced, and as his friend was not permitted to withdraw his resolution, he consented to those amendments, under the impression that they improved the original resolution. Afterwards a proposition was offered by the gentleman from Massachusetts, which, though it had the form of an amendment, and by rule could only be received as such, was, in fact and in truth, a substitute for the resolution of his honorable friend. This new resolution contained a duplication of provisos, as to the discretion of the President in making the communication required, and this produced an essential difference in the tone and manner of the call. His friend was, therefore, justly entitled to consider this resolution not as his, though, in point of form and rule, it had to be so considered by the House, and he had an entire right to act toward it as if in fact it had been the resolution of the gentleman from Massachusetts. When, therefore, the gentleman from Massachusetts, in a vein of pleasantry, talked about his friend's adopting and repudiating his own offspring, he must have forgotten that he was himself the parent of the bantling which he assigned to another father.

Mr. MITCHELL, of Tennessee, said: It is never too late to correct an error. Now, as to precedent, he thought it was impossible, in the annals of the history of this nation, we could get one for the subject now under discussion. They might look back to those annals, and

they would not find even the vestige of one. When did ever a case like this present itself to the House? Where was one to be found, bearing a similitude to it? None, he was sure, had ever taken the devious and strange course which this proposition had taken. When it was first introduced, they had no feelings on the subject; but it was laid on the table, and there rested for a while: but it afterwards rose up, foaming, on them like soda-water. What was all this for? What was all this feeling manifested about? A while ago, they did not want the information, and now they do. If it was right formerly, it is right now. Mr. M. said he had asked for a little information on this subject, in the earlier part of this investigation, but he had received none. Why, therefore, was it asked for now? On the other hand, it was said, it was all right; it was quite consistent this information should be furnished; but, whatever you do, don't have too much of it; their eyes were weak, and they might have such a blaze of information as would palsy every exertion of their minds. Mr. M. said he thought he was able to resist this effulgence. But they were not to have it: for, if they did, they would become as wise as the President.

What is it, then, that gentlemen so much fear? Why is the resolution so guarded? In his mind, Mr. M. said, it was a sort of advertisement to the President, which says, we ask you to give information, but we don't want you to give all the information. Why were those words so often used? Why were they so tautological, unless with a view to communicate to him that, though you are asking for information, in truth you do not want it? There could be no other reason that he could see. The gentleman has said there could be no precedent for this mission. Mr. M. would tell him, in reply, that such a case had never occurred, and if it had not occurred, how could they expect to find a precedent for it? The gentleman from New York said, a case might present itself, where this course might probably be thought necessary; but Mr. M. said, if there was any case on this earth that presented itself for the deliberations of freemen, that required a fair investigation of its whole contents, this was one.

What was it they were about to do? Mr. M. said he would take up the President's language, and on that he would view the matter.

[Here Mr. M. quoted that part of the President's Message, which relates to the mission to Panama.]

This was what the President had said, and this was the foundation of all this inquiry, this argument, this expression of feeling, this brawling for the question. Look at it for a moment, and what was it? The President says we are to partake in the deliberations of this Amphio-tyonic council, but we are to take special care not to violate the neutrality which we hold to England, to Spain, and other powers. This, it

was said, was not a Holy Alliance; but, if it was not a holy one, it must be unholy.

The President had told us, we were to participate in the deliberations; *ergo*, in the debates of this Congress; and we must, therefore, have some Nestor, some Socrates there, some philosopher of the old times, whose mind was so trained that he would not deviate a hair's breadth from the line of conduct he ought to pursue. This was a good cause, Mr. M. said, why they should make the inquiry in the most peremptory manner, why he had accepted the invitation. We could not possibly interfere in their concerns and conclusions, without taking part, one way or the other; and he begged leave to call the attention of the House to the language of one, whose spirit perhaps hovered over this assembly, which he was the very means of founding: they ought to reflect and deliberate coolly, agitated by none of those feelings of asperity towards the powers that be; neither were they to enlogize, and place unbounded confidence in the same power; but they should act, as it became Americans to act—as Representatives of a free and enlightened people, to whom they were to give an account of their conduct; as well as to that tribunal, to the bar of which they must all, sooner or later, appear.

[Here Mr. M. quoted that part of Washington's Farewell Address, which relates to the policy to be pursued by America towards foreign powers.]

Let us, said Mr. M., be free from entangling alliances; let us be distinct, as our motto imports: "*E Phœbus Unum*"—one amongst many; let us be as a towering beacon to man in pursuit of liberty; but never let us mingle in the disputes of other nations, and involve ourselves in their policy. Our distinct situation requires us to take care of our own concerns, and not to meddle with those of other nations.

Why were we to send Ministers there? The President has said it shall be done, and the gentleman from New York has said, we ought to have unbounded faith. Mr. M. said he was no sceptic; he had as much faith as that gentleman could reasonably expect, in the President of the United States, though he had been denounced in some of the little hireling prints, (he did not allude to those in the city of Washington,) as an oppositionist. He repelled the foul charge. He would have taken the same course he had done if he had been raised at the foot of Quincy Hill; but because he was a Tennessean, because he was free, and was not ashamed to speak what he thought right, he was to be set down as an oppositionist. He would, he said, support the Administration where he thought it was in the right, and he would oppose it where he thought it was wrong; and he would have opposed the administration of his friend, General Jackson, had he attained that high station, with the same feeling that he would the present Admin-

istration, if he believed they were acting wrong. He believed, in his conscience, and before God, they ought to have all the information on this subject; all that the President is possessed of, they ought to have. They have been forced, prematurely, into this question. They were anticipating the measure, running into the investigation of a subject before them, except as it would operate in the minds of the public, or somewhere else, and there was no use in it; but if they were to have information, he asked for the whole of it, and if this was not a case where the necessity existed of calling on the President, he would ask the gentleman to point out one to him where it would exist. It was one, he thought of the most important character to the liberties of this country; and there was not, he imagined, one that would come within the grasp of the human mind, which would present stronger results.

Hitherto, Mr. M. said, we had remained free from entangling alliances; we stand alone; we have given the nations of the South the recognition of their independence; we have given them the light of our experience; we have extended the right hand of fellowship to them; and what more had they a right to ask or expect at our hands? But now we are to be placed in a different situation. The President has pledged himself that we shall meet them in this council, and we, the Representatives of the people, are asking for the grounds on which this solemn promise was made. Those who have spoken most in his favor, say he is willing to do it, but, at the same time, they put a kind of silent advertisement into the resolution, which says, don't do it. Was it not right, Mr. M. said, standing, as we did, distinct from all the nations of the earth, that we should have all the information on which this solemn pledge had been given? Let it come, said then, he might be one of the first to say that the President had the best reasons for pursuing the course he had done. All the difficulties in his mind might be removed when it was presented; but, in the name of God, let them have the whole, and not a part of it. If the President had the power of withholding it now, he would have the same power in future, and they would not get it. Mr. M. did not intend to commit himself as to the course he should pursue in relation to this measure. It might possibly happen that light might come which would dissipate the mist which was now spread before his eyes, and he should then be enabled to decide on the course he was to take.

Mr. THOMSON, of Pennsylvania, rose, and observed, that he should not detain the House one minute. If he could agree with his colleague (Mr. INGHAM) as to the construction to be given to the restrictive clause in the resolution, he should vote with him; but he was not of opinion that that clause, where it occurs in the first part of the resolution, covers all the

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residue. This, however, said Mr. T., was not the reason which induced me to take the floor at this late hour. [It was now past four o'clock.] One thought had struck him, which had been suggested by a very weighty remark made yesterday by the gentleman from Delaware, (Mr. McLANE,) who observed, that it was of the utmost consequence that this Government, when acting towards foreign nations, should present a firm, unbroken front. Now, supposing the amendment of my colleague to prevail, and the restrictive clause, where it last occurs, to be in consequence stricken out; suppose the President, when he receives our unqualified call, as to the objects of the Congress, and the powers of our Ministers, shall refuse to make any communication of them. We shall then have to settle the question, whether this House shall submit to such refusal, or whether it shall repeat its application to the President. Two co-ordinate branches of the Government will then be brought face to face, in open conflict. Sir, said Mr. T., I do not wish to see my country placed in such an attitude before the world; and that I may give no possible pretext for a contest of this sort, I shall, though reluctantly, vote against the amendment of my colleague.

Mr. FLOYD then took the floor. He observed that, as there had been already two calls for the previous question, he was warned to say but little now. He was at a loss, for his part, in what attitude this call for information was now to be considered. He believed that all agreed that the subject was new, when it first came up. One gentleman from Louisiana has made a speech very logically on the subject—he tells us, said Mr. F., that our Ministers are to go to Panama to make a figure; that it will be a great spectacle; that we are to exhibit ourselves to the Spanish provinces, and to all Europe, as a spectacle. On this he would say a little more presently. In the meanwhile, we are admonished that we must be *very respectful* to the President of the United States. We are not to ask any thing too rudely. We must sit here and take just such information as he pleases to communicate, and no more. We were told yesterday, by one gentleman, a member of the Committee on Foreign Affairs, that he had been present, constantly, during every moment of the session of that committee, and that not one word was said about applying to the President for this information; but that the chairman of that committee had given them to understand—"informally," he believed, he did not know whether that was the exact phrase, "semi-officially," perhaps—that the President had said, as soon as the resolution should pass the Senate, he would then make a communication to the House; and all we good friends of the Administration think it is respectful and proper to wait his good pleasure. How is it, then, that this question has now taken a different turn? A gentleman from Kentucky, who, I suppose, is better ac-

quainted than we, in these matters, has told us that we must whip the Senate, and urge them on, when they do not subserve the proper ends which the President has in view; that we must send these documents abroad to the people, and let public opinion react and coerce the Senate. This is the idea, it seems. The same thing was told us by the gentleman from Louisiana; and that he expected the House of Representatives would have nothing to do with interfering with the treaty-making power. And is it to be expected, said Mr. F., that the House of Representatives is to be arrayed against the Senate? And for what purpose? Because the Senate does not subserve the President's purpose? That is the truth of it. Has the gentleman from Louisiana ascertained that the palace guards have been overthrown? That the Praetorian cohorts have fled? Or, will he, like Cæsar, say to the Senate, if you won't go, I will take the tenth legion, and go alone—to make a spectacle! The gentleman has told us that Mr. Sergeant, the gentleman named for the mission, is a patriot, a great lawyer, and a man of talents. I believe it—at least the two last. We are acquainted with the gentleman here. We knew him as the great champion of the Missouri question, which the Speaker had the honor to introduce into this House, in which he was supported by Mr. KIRK, in the Senate, who is at present our Minister at London. That was a really important question—more so than this. Sir, I thought, then, that if that question had been pressed farther than it was, it would have put an end to this Union; and I still think, that, if these gentlemen had carried their point, the Union would have been gone. We should have made a spectacle no more. A great spectacle! The gentleman tells us a great deal about national gratitude. Twenty-six millions of people are to rise up, and to invite us to come and make a figure. Sir, I am not in favor of sending Ministers there to make a spectacle.

After some observations in reference to the obligations of neutrality, Mr. F. said, that, by the third article of the treaty, among these Spanish provinces, it is proposed to invite all the States of America to assemble in Congress, there to form a union, offensive and defensive—for that is the amount of it, though not the precise words. The gentleman would send Ministers there to make a spectacle—to witness all the burning lava that may issue from that crater. If we are to do this—if we are to enter into a confederacy with these States, what shall we not have reason to apprehend? The constitution has granted to this House the power to make peace and war. But by these arrangements at Panama, we may be brought into war with any power that shall go to war with either of these States of South America. If any one among them break the treaty, forthwith we are at war. That would be another spectacle. Can I consent to that? And do gentlemen expect that I will undertake to



decide on this question with less information to guide me than the President has given to the Senate? No, sir. The President must give me the same light he gave to them. But it is said the President does not ask our opinion; and that it is gratuitous, on our part, to interfere. Recollect, sir, the Senators of the United States are not mere machines, and component parts of the Executive. They belong, also, to the States of this Union, and are responsible to them.

I hope some *Mason* will be found in that body to develop to the people the true design of this mission, which some gentlemen seem to be so anxious to conceal from the nation. No one knows better than the gentleman from Louisiana the effect of such a disclosure.

Mr. F. put it to every gentleman's common sense, whether he can believe that Ministers were to be sent to this Congress for the ordinary purposes of a foreign mission? The South American Governments send to our Secretary of State an invitation to attend this Congress. The Secretary of State is directed, by the President, to reply, that we will attend it. Their Ministers write back, and say, "This is all very well—we shall be happy to see you." Sir, I am as much attached to the cause of Spanish liberty as other gentlemen; yet, with me, my own country is to be preferred before all others. Suppose the famous Congress at Panama shall contemplate the conquest of Cuba or Porto Rico. I put it to the gentleman, whether he would consent to be a party to it? Whatever he may consent to, I certainly shall not. I am not going to compromise the peace of this country, and run all the risks of a foreign alliance. As for the Holy Allies, if they choose to remain quiet, and manage their own affairs in their own way, I have no objection to their doing so. I am not disposed to undertake to force them to be republics. But, it appears by the arguments of the gentleman, that our Ministers are to produce some change in these people's religion—they are to be a sort of missionaries, and to bring them over from the Catholic faith. Now, sir, unlike the gentleman from Louisiana, I would as soon they should be Catholics as any thing else. That is their own affair: it belongs to their own conscience, and we have nothing to do with it. But the gentleman is for teaching them the principles of toleration. Sir, the gentleman had better begin and send his Ministers to Maryland, where men are cut off from the enjoyment of civil rights, on account of their religious faith, (unless some change has been made this winter.) A gentleman near me says the same is the case in North Carolina; and, in Tennessee, unless I am greatly mistaken, no man is allowed to hold any public office, who does not allow the existence of a God, or who disbelieves the authenticity of the Bible. And yet the Representatives of these very States tell us we must go to South America, to teach

them toleration and religious liberty, when we don't practise them ourselves.

Another gentleman tells us, that we must go there to give efficacy to the message of the late President Monroe, about not seeing, with indifference, the independence of these States assailed—which sentiment, it is said, everybody approved. Sir, I was then in the House, and recollect, that, amidst all the wild and enthusiastic movements which then took place, although I agreed to the sentiment in the proposition, I rose in my place, and protested against the President's committing the peace of the United States by his declarations. But the case is now quite different: then, the people of Europe had just been successful against the Great Man of the World, and there was reason to suppose that they would be for pushing their triumphs on this side the Atlantic. Here, then, was cause enough why we should be inclined to defend the cause of South American liberty, because it might obviate the necessity of ultimately defending our own. But, even in such a case, I would not rashly commit the peace of my country.

The question was then taken on the motion of Mr. INGHAM to refer Mr. HAMILTON's resolution to a Select Committee, with instructions to strike out the clause which reserves to the President the discretion of communicating so much of the information called for, as he may judge not consistent with the public interest to be communicated, where that clause applies to the powers to be given to the Ministers, &c.; and was decided by yeas and nays,—71 to 28.

So the motion to recommit was negatived.

The question now recurred on the main resolution, as amended on the motion of Mr. WINSTER, in the following form:

"Resolved, That the President be requested to cause to be laid before this House so much of the correspondence between the Government of the United States and the new States of America, or their Ministers, respecting the proposed Congress, or meeting of Diplomatic Agents, at Panama, and such information respecting the general character of that expected Congress, as may be in his possession, and as may, in his opinion, be communicated without prejudice to the public interest; and also to inform the House, so far as in his opinion the public interest may allow, in regard to what objects the Agents of the United States are expected to take part, in the deliberations of that Congress."

After ineffectual motions to adjourn, and for a call of the House, the question on the adoption of the resolution, as amended, was finally taken by yeas and nays, and decided in the affirmative, as follows:

YEAS.—Messrs. Adams of N. Y., Addams of Pa., Anderson, Bailey, Badger, Baldwin, Barber of Conn., Barney, Baylies, Beecher, Boone, Brent, Brown, Burges, Campbell, Carter, Cassey, Claiborne, Clarke, Cook, Crowninshield, Davis, Davenport, Dwight, Eastman, Estill, Everett, Findlay of Ohio, Forsyth, Fosdick, Garrison, Govan, Gurley, Haa-

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brouck, Hayden, Healy, Hemphill, Herrick, Hines, Hobart, Hugunin, Humphrey, Ingersoll, Ingham, Jennings of Indiana, Johnson of N. Y., James Johnson, Francis Johnson, Kellogg, Kerr, Kidder, Lawrence, Letcher, Lincoln, Little, Locke, Mallary, Markell, Martindale, Martin, Marvin of N. Y., Mattocks, McDuffie, McKean, McLane of Delaware, McLean of Ohio, McManus, Merwin of Conn., Metcalfe, Miller of N. Y., Miller of Pa., Miner, John Mitchell, Mitchell of Maryland, Mitchell of S. C., Moore of Alabama, Newton, O'Brien, Orr, Owen, Pearce, Peter, Phelps, Porter, Reed, Rose, Ross, Sands, Sloane, Sprague, Stevenson of Va., Storrs, Strong, Swan, Taliaferro, Taylor of Virginia, Thompson of Pa., Tomlinson, Trimble, Tucker of N. J., Tucker of S. C., Van Horne, Van Rensselaer, Vance, Varnum, Verplanck, Vinton, Wales, Ward, Webster, Whipple, White, Whittemore, Whittlesey, Wickliffe, Williams, James Wilson, Henry Wilson, Wilson of Ohio, Wolf, Wood of N. Y., Woods of Ohio, Wright, Wurts, Young—125.

*NAYS.*—Messrs. Alexander of Virginia, Alexander of Tennessee, Allen of Tennessee, Alston, Angel, Archer, Barbour of Virginia, Bassett, Blair, Bryan, Carson, Cocke, Conner, Deitz, Drayton, Edwards of N. C., Floyd, Hamilton, Haynes, Hoffman, Holmes, Houston, Isaacs, Kremer, Lecompte, Mangum, Marable, McCoy, McNeill, Mercer, Merriwether, Mitchell of Tennessee, Moore of Kentucky, Plumer, Polk, Saunders, Sawyer, Smith, Thompson of Geo., Wilson of S. C.—40.

So the resolution was agreed to, and the House adjourned to Monday.

MONDAY, February 6.

MR. GEORGE W. CRUMP, a member from Virginia, elected in the place of Mr. RANDOLPH, appeared, was sworn, and took his seat.

*Mission to Guatemala.*

Mr. FLOYD moved to amend the bill, by inserting a provision "for the outfit and one year's salary of a Minister to Central America." [The effect of this amendment, if it succeeded, would be to send a Minister, instead of a *Chargé des Affaires*, to Guatemala.]

Mr. FLOYD said, when our intercourse with the Governments of the South was about commencing, it seemed to be doubted, whether it was not proper, without waiting for Ministers from them, to send a Minister to each of them. This ceremony had, in relation to several of those Governments, been gone through. Last year, appropriations were made for the salaries and outfits of *Chargés des Affaires* to Guatemala and Peru, and Ministers of the first grade were not sent, because they had not sent Ministers to us. Since that time, however, a Minister had arrived here from Guatemala, and Mr. F. thought we ought to send a Minister there in return. This new Republic had given so many manifestations of a desire for the most friendly intercourse with us, that it was a respect due to her to send to her a Minister of equal grade with the one which she had sent to us. He was not prepared to say how far this rule should be extended, or how far the system of sending Ministers to those Governments should be continued.

He had heretofore had occasion to express to the House his opinion that so many Ministers as we now have abroad would not be always necessary. After diplomatic relations were once established with Guatemala, he did not know that it would be necessary to keep a Minister there. At present, however, justice and courtesy appeared to him to require that we should meet on equal terms the advances made by Guatemala.

Mr. WEBSTER said he wanted information on this subject, which he supposed it was in the power either of the Chairman of the Committee of Foreign Relations, or of the Chairman of the Committee of Ways and Means, to give. He had heard it said that it was the intention of the Government to reduce the grade of all the missions to South America to that of *Chargé des Affaires*. He hoped some gentleman would have it in his power to give the House information on this subject.

Mr. McLANE said, that the bill, as reported by the Committee of Ways and Means, was in conformity with the views of the Department of State, as understood by the Committee of Ways and Means. At the last session, or the session before, the Chairman of the Committee of Foreign Relations had introduced a resolution, instructing the Committee of Ways and Means to inquire into the expediency of reducing the expense of foreign intercourse. On that occasion a letter had been addressed by the Committee of Ways and Means to the Department of State, and information had been received, in answer, that it was the intention of the Executive to reduce the grade of these missions as soon as it could be conveniently done—if not in that year, in the next year. Before this bill was reported, Mr. McL. said, he had an interview with the Secretary of State respecting these appropriations. I understood from the Secretary, said Mr. McL., that, according to the views of the Department, two grades of diplomatic agents had been established—that of Minister Plenipotentiary, and that of *Chargé des Affaires*, and that it was not contemplated to send a Minister of higher grade than the second to any other places than those named in the bill; and, according to this disposition, Peru and Guatemala were placed amongst those Governments to which Ministers of the second grade were to be sent. This was all the information, Mr. McL. said, which he was able to give on this subject.

Mr. FORSTYTH said that the resolution referred to by the gentleman from Delaware, had been offered by him, as a member of this House, and not in his capacity of a member of the Committee of Foreign Relations, or in consequence of any communication held by him with the Department of State. He understood, however, that it was supposed to be the intention of the Executive to reduce all our diplomatic functionaries in America to the grade of *Chargé des Affaires*. He was glad to hear it: for he was perfectly satisfied that now we have Ministers of the higher grade where the maintenance of a

Minister of the first grade was perfectly useless. We have had one, for instance, for some time past, at Chili. What he has done, said Mr. F., I know not. I have not heard, however, any thing of a Minister being sent, in return, from that country to this. His own impression was, Mr. F. said, that there are points in South America where Ministers may be necessary; but he did not conceive that they were necessary at all points. Our relations with those Governments were not such as to require diplomatic agents of that grade to be sent to them. The principal argument in favor of sending Ministers was, he believed, founded on the idea of courtesy to the Southern Nations, which some supposed to require agents of that grade to be sent to open diplomatic intercourse with them. After this ceremony had been performed by the Minister to Chili, Mr. F. had supposed that he would be withdrawn, and a *Chargé des Affaires* sent in his place. Why this had not been done, Mr. F. could not tell.

Mr. FLOYD said, that no Ministers had been received here from Buenos Ayres or Chili, but to these Governments the United States had thought proper to send Ministers; and of course, he should suppose, in a case where a Minister had been actually received from one of those Governments, a Minister would be sent in return. Central America, he thought, was an important State, from its peculiar position, and ought to be treated at least with the same respect which she had tendered to us. How far it would be proper to *continue* a Minister there, he knew not. What was the intention of the President on the subject, the gentleman from Massachusetts probably knew at least as well as he did. This was a case, however, in which he thought every one might judge for himself.

Mr. TRIMBLE said his individual feeling would induce him to vote for the proposition of the gentleman from Virginia, but he was not very sure that that would be the wisest course. He was very well satisfied that we ought, at all times, to keep a Minister in Mexico and Colombia, of the first grade. Whether this was necessary at the capitals of the other States, was a matter for consideration. He had heard, not as from the Chairman of the Committee of Foreign Relations, nor at this session of Congress, that some of those Governments thought it advisable not to have Ministers of the highest grade sent to them, from considerations having reference to their own peculiar situation, the state of their finances, &c. He took it for granted that, in cases where the Executive proposed to send to any one of these Governments a Minister of grade inferior to that of the Minister which they sent to us, the Department of State had ascertained, beforehand, what would be acceptable to that Government. He presumed some such communication had taken place in the present case; and he should, therefore, be opposed to the amendment.

The question was then taken on Mr. FLOYD's motion, and decided in the negative.

Some conversation then took place on the item of thirty thousand dollars, for contingent expenses of foreign missions abroad, the amount of which, Mr. FORTYTH thought unnecessarily large, in comparison with the appropriations of former years. Mr. McLEAN explained the disparity, as being produced by the increased number of those missions, and the reduced amount of the unexpended balance of that fund in this year. Mr. WOOD, as Chairman of the Committee on Expenditures in the Department of State, bore testimony to the satisfactory manner in which those accounts were settled and kept, and to the regularity and precision of the receipts and vouchers, for the four years past that it had been his duty to have personal cognizance of the subject. No motion resulted from this conversation.

#### *Postmaster General's Salary.*

The item of four thousand dollars, for the salary of the Postmaster General, next coming under the consideration of the House—

Mr. NEWTON moved to strike out *four* and insert *six* thousand dollars, as the amount of salary for the Postmaster General. It is needless for me, said Mr. N., to state that that officer merits this increase of his salary; that, when he took charge of the Post Office, it was chaos—and that he has, by his talents and assiduity, reduced it to order; that he has augmented its income, and paid off its debts, at the same time that its operations have been greatly multiplied and extended.\*

Mr. COOK suggested that the compensation of the Postmaster General is fixed, by a permanent law, at four thousand dollars per annum, and that the appropriation proposed by the bill only conformed to the law. He was himself decidedly of opinion that the services of the Postmaster General have been such, and his labor such, as to entitle him to a better compensation than that which the law allows to him. The better way to accomplish this object, however, would be to introduce a bill on the subject. If it could be accomplished in the way proposed, he would cheerfully vote for it: for he had some knowledge, and so had every member of this House, of the importance of the services of the Postmaster General—they were not exceeded in value by those of any other officer under this Government. He was entitled to praise for them, and to the thanks of his country.

Mr. ALSTON said it was certainly improper to attempt to augment the salary of the Postmaster General by an amendment to this bill: and he doubted very much, if the amendment were made, as proposed, whether the Postmaster General would derive any advantage from it: for the law defines the amount of his compensation, and the accounting officers will abide by that law, without reference to the

\* Mr. McLean, an Associate Justice of the Supreme Court, was then Postmaster General.

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amount of appropriation. Mr. A. said he believed that the present Postmaster General is as good an officer as we have in the Government. That, however, was not to determine the question involved in this amendment. The question was, is the sum now allowed by law, an adequate salary for the office of Postmaster General? If so, let him receive it, and no more. The amount is what he was to receive when he accepted the office; but, because he had done his duty better than those who had gone before him, it was now proposed to increase his salary. Mr. A. did not think this a correct principle to act upon in regard to the compensation of public servants.

Mr. Cook made some further observations, indicative of his desire to vote for this amendment, if it could be properly introduced into this bill. He spoke of the evidence afforded by official reports, and by his own personal observation, of his labors, of the devotion of Mr. McLane to his public duties. He believed, he said, that the Postmaster General performed more labor than any other officer under the Government, and labor as interesting to the country as that of any other officer.

Mr. Newton said he did not wish to embarrass this bill by any proposition likely to be questioned, and he therefore withdrew his motion; but he certainly should introduce it to-morrow, in the form of a distinct proposition.

MONDAY, February 18.

*Naval Appropriation Bill—Support of the Liberia Colony Agency.*

The House then passed to the orders of the day.

Whereupon, Mr. McLane, of Delaware, moved to postpone all the orders which preceded the Navy Appropriation Bill. The motion was agreed to, and the House went into Committee of the Whole, Mr. MARKLEY in the chair, on that bill.

On the item appropriating \$100,000 "for the agency on the coast of Africa for receiving the negroes, mulattoes, and persons of color, delivered from on board vessels seized in the prosecution of the slave trade, by commanders of the United States armed vessels"—

Mr. McLane observed, that this sum had not been recommended by the Committee of Ways and Means, but was the sum required by the Navy Department. In investigating the subject, the committee had been of opinion that a smaller sum would be sufficient. It was not for them to enter into the question of the expediency of the law. That was a question to be considered by the House. As long as it remains in force, it is the duty of the committee to report such a sum as is requisite to carry the law into effect. The bill to which he referred was passed in 1819, in addition to the provisions of a previous act for the suppression of the slave trade. It allowed ships

of the United States to capture vessels under the American flag, engaged in that traffic. It gave a bounty on all slaves so captured, and provided that the captives should be returned to their native country, and should be supported in the meanwhile at the public expense. It established an agency on the coast of Africa, where these returned captives were to be received, and to be kept until it should be discovered to what nation they belonged. At the last session of Congress, the President sent a message, in which he informed the House that he had appointed two agents on the coast of Africa, and the agency continued until 1823, when another appropriation of fifty thousand dollars was made for the further execution of the law, and the same system still continued, being based on the law of 1819. The Committee of Ways and Means had supposed that it would be most proper to appropriate at this time for the present year only, leaving it for Congress to say whether the system shall or shall not be continued. Should it even be decided that the system should cease altogether, some appropriation would still be requisite, as the negroes already transported must be supported, and the contracts entered into must be fulfilled. The committee had thought thirty-two thousand dollars would be a sufficient appropriation at this time, that being the amount of a previous balance, which, not being expended within two years after it was appropriated, had been carried, of course, to the surplus fund.

Mr. McLane then stated the data on which the estimate had been made. Eight thousand dollars would be required to support the slaves now on hand, two thousand eight hundred to pay the salaries of the agents, and twenty-one thousand to transport four hundred and twenty negroes to Africa. (Sixty dollars is the average price for transporting a negro on board the slave ships. The above calculation is made at much less.) It was not probable, however, that the whole number would be returned within the present year. He then moved to fill the blank with thirty-two thousand dollars.

Mr. LIVINGSTON asked if any provision was made in this calculation for the eventual capture of other negroes during the year?

Mr. McLane replied, that this contingency would be met by part of the sum for transportation, as it was not probable that the whole of that sum would be used the present year. It was the opinion of the Secretary of the Navy that thirty-two thousand dollars would be sufficient for the year.

Mr. FORSYTH thought that the committee had fallen into a mistake, as to the number of negroes that would have to be transported—only two hundred, and not four hundred and twenty being the true number. But he had not risen for the purpose of making this correction. He thought this might be as good a time as any to call the attention of the House to the law of 1819, and to the extraordinary

course of the Government under that law. The law contemplated simply an agency on the coast, to which might be sent the negroes captured, according to its provisions; but, instead of this, the President had sent out agents—had fixed their salaries—had moved the place of settlement two, if not three times; and although only thirty persons had been sent, of whom but twenty-eight were supported by the United States, it had cost the Government seventy thousand dollars. This constituted a state of things which certainly called for the consideration of Congress. By the present estimates, it appeared that the support of the whole four hundred and ninety-four for a year costs but twenty-six thousand dollars, yet here were two agents, at a salary of two thousand eight hundred dollars, to take care of twenty-eight persons. Now, although none can seriously contemplate the repeal of the laws enacted against the slave trade, yet the interference of Congress is certainly required to prevent so great a waste of the public money. As things stand, the expense of the last five years must not only continue but increase. The twenty-eight persons now supported, may, before the year is ended, be augmented to two hundred and twenty-eight. The late President, in his message, laid before Congress his views on the subject of this agency. Congress passed no act on the subject, and hence, the conclusion was drawn, that the construction which the President had put on the act of 1819, was also the construction of Congress. The House did nothing, and it was concluded, of course, that it coincided with the President. If this is to be considered, in all cases, a legitimate inference, Executive messages should be closely scrutinized. But, be this as it may, there has since been a departure from the instructions of the late President. He fixed the salaries of the two agents at one thousand three hundred and one thousand two hundred dollars—they are now one thousand six hundred and one thousand two hundred dollars. He selected a place for the agency, but gave express directions to the agents not to perform any act of colonization. The act of Congress contemplated that our agency should have nothing to do with any of the local Governments of Africa, nor with the soil. I now find, said Mr. F., that we have to do with both. It appears that there is some undefined connection between the agency of this Government and an association of private individuals, called the Colonization Society. The report from the Department says, that the connection has been found mutually beneficial, and, as I understand that report, a part of the expense which has been paid by the Government, is for the support or benefit of persons under the control of the Colonization Society. Now, sir, I should like to know what the nature of this connection is. I wish to understand how far the United States are part owners of the soil of the colony; for it appears to me that, notwithstanding the act of 1819, and

the President's instructions under that act, both prohibiting any acts of colonization, then has crept in a practice which, in effect, goes to colonization; and, with the most profound respect for the motives of those individuals who first instituted, and who continue to promote, the Colonization Society, I must be permitted to express a wish to have no connection with it. If any such connection has existed, I wish it immediately dissolved: for, although I believe its founders to be among the most amiable and best men in the country, yet I have no idea that the funds of the United States are to be spent by persons not responsible to the Government.

Mr. McLANE replied, that, on the particular subject of the gentleman's inquiry, he had no information to give. He believed that no connection whatever existed between the agency and the society, except it is to be found in the fact, that the agents of the Colonization Society are also the agents of the United States. The Secretary's report expressly says, that there is no connection between them; but the agents of the Government are authorized to afford to the colony assistance and protection whenever it may be required. As to the number of negroes to be transported to Africa he had received information that there were one or two hundred in Alabama, not included in the Secretary's letter.

On motion of Mr. ALLEN, of Mass., the committee now rose, and, having obtained leave to sit again,

The House adjourned.

TUESDAY, February 14.

*The Revolutionary Pension System.*

Mr. ESTILL offered the following:

*Resolved*, That the Committee on Military Pensions be instructed to inquire into the expediency of amending the several laws relating to Revolutionary pensioners, as to allow said pensioners to receive their pensions from the date of their several declarations, made pursuant to the provisions of the act of Congress passed on the 18th of March, 1819, entitled an act to provide for certain persons engaged in the land and naval service of the United States, in the Revolutionary war.

Mr. ESTILL said he would offer to the House some of the reasons which induced him to introduce the resolution; and in doing so it would be necessary to revert to the course of legislation which had been pursued on the subject of Pensions.

In 1818, Congress passed an act providing pensions for persons who had served during the war. By this act it was directed, that any person claiming the benefit of it must make declaration, in a court of justice, among other things, that he was so poor as to stand in absolute need of the public bounty—from which it appeared evident that the intention of the law was to make a provision for paupers only. By a subsequent act, passed in March, 1819, it was de-

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clared that the pension should commence at the time the required declaration should be made. It was soon found that an immense class of persons were receiving pensions who were never contemplated by the Legislature, and, in consequence, another act was passed in 1820, the effect of which was to exclude all but those who proved themselves to be paupers. By this last act, the Secretary of War was made the judge, to determine whether any applicant had, or had not, satisfactorily shown himself entitled to the benefit of the public bounty—and he was required to withhold the payment of the pension, till a certain schedule, accompanied by a prescribed oath, should have been laid before him. In 1822, a farther act was passed, supplemental to those preceding; and according to the construction of this supplemental act, which was adopted as the rule of the War Department, it was determined that (even in the case of those who finally proved themselves to be paupers, and fully entitled) all pensions should be suspended, from the date of the act of 1818, till the time full proof was made according to the new forms required. In consequence of this construction of the law, it happened that those very persons for whose benefit the pension law first passed, and who were admitted to be legitimately entitled to its benefits, lost the amount of their pensions from the passing of the act of 1820 to 1823; and this without having been guilty of any fraud, or attempt to deceive. A case of this kind existed in that part of the country from which he came. An individual applied for a pension in 1818, and, furnishing the proof then required, continued to receive it till 1820. Owing to sabre wounds in his head, his understanding was much impaired, and he neglected to furnish farther evidence, till 1824; in consequence, he was deprived of his pension for those four years, though most clearly one of those persons for whose benefit the law was made. Mr. E. thought this was unjust. He did not believe there were many cases of a similar kind; but the object of his resolution was to embrace this class of persons, whether few or not. He differed from the War Department, in the construction which it had given to the law of 1823. He did not believe it was the intention of Congress to withhold a pension from any of those who were indeed paupers, and had served their country with fidelity. He was not, however, very anxious in the matter. He presumed the act of 1820 had for its object nothing more than to protect the treasury from imposition, and to ascertain whether an applicant was what he pretended to be. The resolution asked that a committee may consider the subject, and report on the expediency of amending the law, unless they should agree with Mr. E. in the opinion that the present construction of the law is erroneous; in which case they would so report; and an expression would be obtained of the opinion of Congress, one way or the other, which was all Mr. E. aimed at.

Mr. McCoy observed, that he did not like to

say any thing in opposition to the wishes of a colleague; but the decision of the Secretary of War was now settled, and he thought it would be a pity to disturb it. The law was sufficiently plain—it meant to say that the pension should commence with the date of the proof. It was never the intention of Congress that those who were stricken off the pension roll, should again receive pensions, till they had satisfied the proper officer of the Department that they had a right to them.

Mr. ESTILL said in reply, that he had not expected any objection would be urged against making an inquiry; his resolution contemplated no more; and, when the report should be received from the committee, it would be time enough to discuss the merits of the question.

The question was then put, and the resolution was adopted—ayes 95.

#### *Navy Appropriation Bill—Liberia Agency.*

The House then again went into Committee of the Whole, Mr. MARKLEY in the chair, on the bill "making appropriations for the Naval Service of the United States, for the year 1826."

The question being on filling the blank in the item for an agency, and expenses for captured Africans, on the coast of Africa, with \$82,000—

Mr. FORSTH observed, that he was by no means satisfied, either by the information stated yesterday by the Chairman of the Committee of Ways and Means, or that contained in the report of the Secretary of the Navy, of the propriety of this appropriation. The chairman of the committee had said, that the report of the Secretary expressly states, that there is no connection between the United States Agency and the Colonization Society. For himself, after an attentive perusal of the report, Mr. F. said, he was unable to discover in it any such declaration. There is, indeed, one passage, in which the Secretary says, that the Government Agents have been instructed not to connect their views with those of the Society; but it is most manifest that there is a perfect connection between the Agency and the Society. The Secretary declares that they have a mutual dependence on each other. He goes so far as to say, in so many words, that the Society, the Colony, and the Agency, could not exist independently of each other. The place of both is the same; the officers of both are the same; the same persons act in a double capacity, and are authorized by their appointment and instructions, to incur expenses for the benefit of the Society, whenever required so to do. Mr. F. did not profess to be intimately acquainted with the concerns of the colony; but he believed he might state, with great safety, that there is a fort there. He found, from one item in the report, that, for the defence of the twenty-eight persons whom the United States have to support at the Agency, the Agents had purchased 220 muskets. This seemed a very sufficient armament for twenty-eight men, even with both the Agents at their head. It must

be evident, from the whole language of the report, that the entire concern is nothing but a combination of the two interests. The Secretary speaks continually of "the settlement," "the establishment"—and it is evident he includes the Colony and the Agency under this term, "a settlement." The language of the report is, throughout, strangely inaccurate. The Secretary says, the "settlement may be said to have recovered from its embarrassment." In another place he says, that, if the blacks continue there, they will add strength "to the establishment." To him, Mr. F. said, it appeared most evident, that there is a connection between the Agency and the Colonization Society; and that the blacks supported there by this Government, are governed in effect by that Society. He mentioned these facts that the committee might turn their attention more particularly to the subject.

Mr. McLANE said he did not understand the gentleman from Georgia as opposing the motion he had made to fill the blank, but as having rather directed his observations to some proposition which is hereafter to be considered in reference to this subject. If so, he would say nothing in reply.

Mr. FOSBERT replied, that he should not oppose the motion to fill the blank.

Mr. OWEN observed, that, if the sum proposed by the Chairman of the Committee of Ways and Means was to be applied as appropriations for this object hitherto had been, he should be opposed to giving even \$82,000. But if it was to be expended according to the provision of the law as passed by Congress, he would then support the motion, seeing that such was, at present, the law of the land. But he desired that it might be understood as the will of this House, that these funds are not in future to be applied in the manner they have been, but in such a manner that the House may know and understand their application. If the consequences to grow out of the connection of the Government with this colony were appalling, he was for meeting them and putting them down.

Mr. McLANE said, in reply, that he should not attempt to discuss the expediency either of the law on this subject, or of a connection between the United States Agency and any association of private individuals. He thought that such remarks had no connection with the subject immediately before the House. The gentleman appeared to look forward to evils which might, or might not, ever take place. But he would only observe, that it was from precisely such views, as they entertained, that the Committee of Ways and Means had been desirous of limiting the appropriation for this Agency to the present year. They wished to make the sum so small, that none of those serious evils which the gentleman apprehended could possibly grow out of it. Their desire was to appropriate just enough for the support and transportation of the negroes already captured, and such

as might be captured during the present year. If any irregularities had taken place—and he was not prepared to say that they had—they probably grew out of the large sums heretofore appropriated. But if the sum he proposed should be inserted in the bill, they would be prevented by the necessity of the case. If it was proper at this time to enter into this subject, he believed he could show that many of those things which had been represented as abuses, were in reality not so; but he would not now enter upon a discussion which did not belong to the subject in hand. As to the letter of the Secretary of the Navy, and the animal-versions which had been made upon it, he should, for the same reason, abstain from any reply. Of one thing he was entirely satisfied, and that was, if the Agency for captured Africans was to continue at all, the Department could not get along with a less sum than \$82,000 for its support.

The question was then put on filling this blank with that sum, and carried, without a division.

Mr. BARNY then moved the following amendment:

"For the purchase of a site for a Navy Yard in the port of Baltimore, and erecting suitable buildings thereon, \$20,000."

In support of the amendment, Mr. BARNY observed, that it became his duty to present it, in consequence of the wishes of his constituents, expressed in a memorial addressed to this House, by the City Council of Baltimore, and farther confirmed by resolutions of the Legislature of Maryland, instructing the Senators, and requesting the Representatives, from that State, to bring the subject before the attention of Congress. The House at its last session, had passed an act for the building of ten sloops of war. As soon as this became known in Baltimore, a memorial was prepared and presented to the Secretary of the Navy, praying that one or more of these vessels might be built in that city. The answer returned to this memorial was, that that arrangement was not within the authority of the Secretary; Congress having already designated at what places the vessels of the Navy should be built, by the establishment of the different Navy Yards.

Mr. B. now requested the indulgence of the House, while he presented, in a very brief manner, some of the claims which Baltimore conceived herself to possess, to the location of a Navy Yard there. In the first place, the same depth of water was to be found in that port, as either at Philadelphia or Washington, viz. from eighteen to twenty feet; which, though not sufficient to float a vessel of war to the Ocean, with her full armament on board, furnished as great facility for that purpose as was to be found at either of those places; which had nevertheless been selected as sites for Navy Yards. And, while Baltimore possessed the same advantage in point of water, it had greater advantages in some other respects. The

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shores of the Chesapeake furnished an abundant supply of cedar, white oak, locust, and white pine. These valuable species of timber were there near at hand, while the other ports at which Navy Yards were established, had to send there to get it. Baltimore had also the advantage of being situated in the centre of an area, of twenty or thirty miles, abounding with greater water privileges and water power, than any other district of the same extent in the United States. It presented the greatest facilities for the manufacture of cordage and canvas, for the rolling of copper, and for the preparation of almost every species of material, required in ship-building. There is, at this moment, building in that port a most splendid ship for the use of a foreign Government—a vessel which would bear comparison with any that had been constructed in the most approved naval establishments. The mechanics of that city were numerous, and as expert in their respective branches of art as any that could be found. Their pride, too, was interested in this measure, and they would exult in an opportunity—it was the height of their ambition—to have their work exhibited and compared with that of others, in contributing to that Navy, which had encircled the stars of the American banner with unfading glory. He appealed to the gentleman from Massachusetts, if when the Constitution floated into the port of Boston, that gentleman and his fellow-citizens did not feel the glow of conscious exultation and delight. What he wished—what he asked was, that his deserted city might be permitted to share in the same feeling.

It might, perhaps, be urged against the claims of Baltimore, that the Java frigate had been built in that port, and had since been pronounced of very inferior quality. But gentlemen, in fairness, ought to remember, that the Java was built under circumstances of the most disadvantageous kind. She was built by contract: she was built for a sum little more than half of what has been paid for other frigates; she was built when the enemy was at the door—when the circumstances of the Government required the utmost despatch, and when the vessel to be completed was intended to be used more for the present necessity, than to be preserved as a lasting monument of the skill of the mechanics. Another frigate was constructed at Philadelphia at double the expense. Both had since been repaired, and it was found that the repairs of the one cost nearly as much as those of the other. But he might appeal to the Erie and the Ontario, which still remain, as evidence of the skill of the Baltimore mechanics, which are allowed to be crack ships, and enjoy a distinguished reputation. Gentlemen, perhaps, were startled at the idea of the expense of a new Navy Yard; but let them recollect that a Navy Yard can be established at Baltimore with less expense to the Government than at any other place. It is already a naval station. Officers of the Navy constantly reside

there engaged, it is true, in the recruiting service, but still they are there. Already there exists in that port, buildings erected by Government at the time of the construction of the Constellation frigate. These are, at present, private property, but it will not require more than twenty thousand dollars to restore them to the Government, and to put them on a footing to render benefit to the nation. As to the capacity of Baltimore to its own defence against an enemy, the experience of the last war furnished, of itself, the most conclusive evidence. The city was attacked—attacked by a powerful and successful enemy—attacked at an hour when all hearts were dismayed by their barbarous triumph in the destruction of this city; and the first ray of hope that broke upon the gloom beamed from the triumphant repulse of that enemy at Baltimore. It might be said that there were already two Navy Yards within the Chesapeake; but what is the Chesapeake Bay? It is an inland Ocean, whose wide expanse is able to embrace all the navies in the world. When the extent of this bay was taken into view, and the connection of its various branches, with the most important portions of our country, the argument we had mentioned would be found to possess but little weight.

Having briefly touched on some of the advantages which would result from the establishment of a Navy Yard at Baltimore, Mr. B. said it would be proper that he should state some of the disadvantages under which that city at present labors. Her Representatives might appear before the House, and might also demand a redress of grievance at its hands. It is known to all that Baltimore is a commercial depot, and it must be acknowledged by all to be the true policy of this Government to build up, by every proper means, the interests of commerce. But Baltimore might complain that the United States Navy are continually and sedulously occupied in drawing away her seamen, (of all other things the most important to a commercial city,) even before they can enter the port on their return voyage. It is well known that our seamen are not migratory, as to the ports from which they ship themselves. They do not pass from port to port in search of employment, but commonly ship themselves in the same harbor to which they have returned from their last voyage. This is known to the recruiting officers, and it often happens that seamen, arriving at Baltimore, are engaged for the Naval Service before they set their feet upon the wharf. Commerce is thus crippled by the policy of the Government. And, as to ship-building, no sooner has an enterprising individual collected together a few mechanics, with a view to prosecute that business, on a respectable scale, than his men are immediately tempted away by the prospect of superior prices at the naval stations of the Government. A union of such disadvantages must be sufficient to break down any commercial city whatever. Yet it never had been the habit of Baltimore



to indulge in the language of complaint or murmuring. She had submitted quietly to the privations of her situation, and, even in the severest seasons of non-intercourse and embargo, this Government always heard from that city the cheering voice of a friend. She has paid many millions into the Treasury, and now asks only that a small portion of that wealth should be returned to her which she had been the means of collecting for the country at large.

Mr. B. said he had thus, he hoped, brought the subject fully, though feebly, before the view of the House. The whole sum for which he asked was but twenty thousand dollars, and he felt persuaded, if it should be granted, that the result, while it would be eminently beneficial to Baltimore, would be not less conducive to the Naval interests of the United States.

Mr. STOKES (Chairman of the Committee on Naval Affairs) hoped that the gentleman from Maryland would consent to withdraw the amendment which he had now offered. On the motion of that member the Naval Committee had been directed to inquire into the expediency of establishing the Navy Yard in question, as well as some others, proposed by other gentlemen. These various projects were now before the committee, and under consideration. In relation to this, as well as some of the other propositions, the committee had referred to the Navy Department for information, and he would put it to the gentleman, whether it would not be better to wait, before acting on the subject, until the committee shall have reported to the House. An opposite course might operate to injure the very object the gentleman had in view; and besides, Mr. S. said, he felt some doubt whether the amendment was strictly in order, so long as the same subject was before a committee of the House.

Mr. BARNY, in consequence of this suggestion, withdrew his motion for amendment.

Mr. STOKES then said, that he had been directed by the Naval Committee to move the following amendment:

"For surveying the harbors of Savannah and Brunswick, in Georgia; and Beaufort, in South Carolina, eight thousand dollars."

Mr. S. said, that the views of the committee were, in substance, these: That it might be important at a future day, for the Government to have a Navy Yard at some point south of the Chesapeake; and, if so, it was desirable that a survey should be made of the different harbors on that part of the coast. Such surveys might also be of importance to the commercial and to the navigating interest of the country. The sum of eight thousand dollars would be sufficient to cover the whole expense of the surveys now proposed, and perhaps would prove more than sufficient for the object—in which case the balance would go in the surplus fund.

Mr. BARNY moved to amend this amendment by inserting therein "Baltimore, in Mary-

land;" and increasing the proposed appropriation from eight thousand dollars to twelve thousand dollars.

Mr. STOKES observed, that the harbors proposed in his resolution had not yet been surveyed at all. Whether the harbor of Baltimore had been surveyed as particularly as was desirable, he did not know—the House would know when they had received the report of the Secretary of the Navy on the subject. But, with respect to those harbors embraced in his motion, he had had personal communication with the Department, and he knew they had not been surveyed. The Government has a fleet in the West Indies, which needs a rendezvous in one of the Southern States. The necessity, therefore, for these surveys, was pressing—it was immediately pressing. But, as to Baltimore, he did not conceive this to be the case. If it was a fact that the harbor of Baltimore had not been surveyed, the gentleman would state it to the committee.

Mr. BARNY replied, that all he wished to accomplish by the last amendment he had offered, was, that a subject of so much consequence should receive a full examination. He did not know that so large a sum as that he proposed, would be required to authorize the survey, in addition, of the harbor of Baltimore. Perhaps a smaller sum might be sufficient. He hoped that the opposition already manifested to an appropriation towards a Navy Yard at Baltimore, would not be extended to a measure intended merely to obtain information.

Mr. McLANE said he had no disposition to embarrass the proposition—his only difficulty arose from the manner in which these amendments were proposed. He believed it to be a rule of order that no subject referred to one of the committees of the House, could be brought into a Committee of the Whole, in the form of an amendment to a bill. He did not say that the present was precisely such a case; but he thought the reason of the rule equally applied. One committee should not interfere with another. The Committee of Ways and Means had examined the estimates from the Department, and had prepared a bill in conformity with them. Now, another committee, which has had none of those estimates before it, proposes an amendment to the bill. Every other committee of the House may do the same thing, and, if an appropriation bill is to be encountered by every new project, which may have been matured before other committees, but of which the Committee of Ways and Means had had no opportunity to judge, he did not see how that committee was to get along with any of the bills it became its duty to report.

Mr. STOKES said, that the subject of his amendment had not been strictly before the Naval Committee, and no vote had been taken upon it; but, if the House thought the measure was necessary, and the necessity of it was pressing, they would not, on that account, refuse to make provision for it in this bill.

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A discussion, as to the point of order, was further prosecuted by Messrs. POWELL, DWIGHT, STORES, and MOLANE, which resulted in Mr. STORES' withdrawing the amendment.

Mr. LITTLE now renewed the amendment which had been offered by Mr. BAENEY. He said, that, in supporting the proposition of his colleague, he felt it his duty to submit some considerations to the House, which he should do in as brief a manner as possible. He flattered himself they would do him the justice to believe that, in desiring to see this proposition adopted, he was actuated as much by a regard to the interests of the Union at large as to those of his own immediate constituents. At an early period of the Government, Congress had passed a law for the building of a number of vessels of war, and Baltimore had been selected as the place for building one of them, which was now engaged in actual service. The advantage of such an arrangement to the Government must be evident. Facility in the construction of any thing which immediately refers to the defence of the country, always must be important. There were, in Baltimore, a great number of mechanics of all descriptions, especially of naval architects. If a Navy Yard should be established there, and the purposes of Government should at any time require an extra number of mechanics, the population of Baltimore can always furnish them. Whilst, on the other hand, should it be necessary at any time to dismiss a considerable portion of the persons employed, no such inconvenience will result as in places, such, for example, as Washington, where the public mechanics, if dismissed, must be thrown altogether out of employment. In this city, the Government is in some sort bound by humanity to retain workmen in its employ during intervals in which they are not absolutely needed; but there, a mercantile public is always at hand and ready to employ and to reward their industry. It is always an object worth the attention of the Executive, that those points selected as sites for the building of our navy, should, as far as practicable, be secure from exposure to the approach of an enemy. This security is enjoyed by Baltimore in an eminent degree. The events of the recent war put the truth of this position in a very strong point of view. It was known to everybody, that when the enemy approached this city, there was in fact a race between the forces of the enemy and our own Government in the destruction of public property. The Navy Yard was fired by our own officers, and such was their assiduity and success, that one very valuable vessel, then at that place, was entirely destroyed. This would not have happened if the Navy Yard had been stationed at Baltimore. This same enemy did approach that city—

Here Mr. DWIGHT rose to order, insisting, that, as this subject was already before a committee of the House, and had not yet been reported on by that committee, it was not in order to introduce the same subject in the form of an amendment.

The Chair decided the amendment to be in order, from which decision Mr. DWIGHT appealed.

On this appeal a discussion arose, which occupied the House for nearly an hour.

The decision of the chair was opposed by Messrs. DWIGHT, McDUFFIE, MALLARY, McCoy, and CAMPBELL; and advocated by Messrs. LITTLE, BASSET, FORSYTH, and COOK.

The SPEAKER closed this debate, by expressing it as his opinion, that the decision of the Chair was incorrect. The principles of order did not admit of the same subject being referred for consideration at the same time to different committees. If it were so referred, the report of one committee might be made, and the decision of the House taken on it, and then the report of another (perhaps of an adverse tenor) would come in, and a new decision must again be had, and so on as often as the report of any committee should be received. The Committee of the Whole was but a committee of the House, though a large one, and before any subject could be discussed in this committee, which had been referred to any other committee of the House, the committee which had charge of it must first be discharged from its consideration. As this subject was now before the Committee on Naval Affairs, upon a memorial from Baltimore, if gentlemen wished to bring it into Committee of the Whole, they must first move to discharge the naval committee.

Mr. LITTLE, though still retaining his original view of the subject, consented to withdraw his proposal to amend.

Mr. COCKE moved the annexed proviso, to come in after the following item:

"For the pay and subsistence of the officers, non-commissioned officers, musicians, and privates, and washerwomen of the Marine Corps, one hundred and seventy-six thousand one hundred and fifty-eight dollars and ten cents:" "Provided, that no brevet officer of the Marine Corps shall receive the pay and emoluments of his brevet grade, unless he be on duty, and have a command according to his brevet rank, and that no allowance shall be made to the Paymaster and Quartermaster of said Corps, beyond the compensation provided by the act of 16th April, 1826, entitled, 'An act authorizing an augmentation of the Marine Corps, and for other purposes.'"

Mr. COCKE observed, that, on examining the act establishing the Pay and Quartermaster Department, it would be found that the officers are entitled to a certain amount of additional pay, besides what they receive in the line of the army. But on comparing the directions of the law with the estimates furnished by the Committee of Ways and Means, it would appear either that the laws had been disregarded, or that those estimates were incorrect.

[Here Mr. C. read the second section of the act of 1814, and observed, that if there was any other act on the subject, he had not been able to find it.]

On looking at the estimates, we find for a

Lieutenant Colonel Commandant, seventy-five dollars per month: for one Lieutenant Colonel, sixty dollars per month: (This latter, he presumed, must be a Brevet Colonel:) and for Paymaster, fifty dollars per month. Now, it would be found that this officer received, in fact, the pay and perquisites allowed to a Major of Infantry, which gives him at least five hundred dollars more than the law will justify. The Quartermaster is a Lieutenant of the Corps, and his pay is estimated at sixty dollars, and the perquisites of his grade, from which it will appear that he receives the same pay as a Major of Cavalry. If this was so, it presented a case which ought certainly to be remedied.

Mr. McLANE observed, that he had no intention to oppose the amendment, provided it did not interfere with the third section of the same act.

Mr. COOK replied, that his amendment went a little further, and was intended to prevent the officers of this corps from receiving the pay of their brevet rank, unless their command is the same.

Mr. BARTLETT said, that, though not opposed to the principle of the amendment, he should vote against it, as appended to the present bill. He hoped that the gentleman would bring it up by a distinct resolution, and would recommend a revision of this whole subject, by a committee of the House. He had long been of opinion that some such revision was necessary; for, any man who would look at the statutes, and compare their provisions with the pay which the officers actually received, would find himself involved in a wilderness of inextricable difficulty. His own objection was not to the pay which the officers received, but to the manner in which the amount of it is determined. He was in favor of giving them a direct allowance in money, but of striking out all discretion in the Department, as to perquisites and other means of emolument. By this latter system, it had come to pass, that, while an officer of the Navy, engaged in actual service at sea, received sixteen or eighteen hundred dollars a year, an officer of the same rank, who stayed on shore, and did nothing but superintend a Navy Yard, received emoluments to the amount of three or four thousand dollars a year. This surely was a state of things that called for revision, and for reformation. Some different rule appeared to be observed on the subject of pay, than that which was prescribed by the statute. He would, therefore, send the whole subject to a committee: but he was opposed to the present amendment, because it was pointed exclusively at a corps, in which ambition had but a very limited scope, and which, so to speak, had been already sufficiently degraded by acts of our legislation.

Mr. DWIGHT now moved to amend the amendment, by inserting after the words "according to his brevet rank," the following: "*or command upon a separate station.*"

Mr. POWELL objected to this amendment, as

going to leave the law precisely where it was.

Mr. McLANE said, that if any amendment went to change the law, he should be opposed to it, as an appropriation bill did not furnish the proper means for altering the laws. If the amendment only went to enforce the law as it stands, it might be a very proper one. If any abuse does exist, it ought to be corrected.

Mr. COOK, having the same impression as Mr. POWELL, asked the mover of the original amendment for a farther explanation.

Mr. COOK then went into a further illustration of his proposition; insisting that, if the officers do receive no more than the law allows them, his proviso could do no harm; and if they did receive more, his proviso went to prevent it.

Mr. COOK insisted that the amendment was only to say, that the law should be obeyed, and it was idle to re-enact what had already been enacted.

Mr. McDUFFIE said, that he had no objection to the amendment, provided it contained a literal transcript from the act of Congress. In that case, he thought it could do neither much good nor much harm, and was willing to consent to it to gratify the mover. But he should certainly object to the gentleman's giving his own interpretation to the law, instead of the law itself. He was inclined to believe, for his own part, that the head of the Navy Department had, in this matter, acted quite correctly. He knew, personally, that one of these officers does hold a separate command; he presumed the same to be the case with the other.

The question being then taken on Mr. COOK's amendment, it was rejected.

The amendments to the Navy Appropriation Bill, made in Committee of the Whole, were read and agreed to in the House, and the bill ordered to be engrossed for a third reading.

The House adjourned.

WEDNESDAY, February 15.

*Breakwater in the Delaware.*

The House then passed to the unfinished business of yesterday, which was the once rejected but reconsidered resolution of Mr. MASON, calling on the President of the United States for certain statements relating to the receipts and disbursements in the ports within the Delaware.

The resolution having then been again read,

Mr. WOOD, of New York, said, that when this resolution was before under consideration, he had objected to it on the ground of the principle on which the call was founded, which was of a nature not to be tolerated in this House, being, in substance, this: that local interests were to influence the House in deciding on objects of a public nature; and that the amount of revenue which happens to be collected in any particular port, is to be used as an argument why that port should receive a corresponding portion of the public resources expended in its

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accommodation or defence. This principle had been distinctly avowed by a gentleman from Pennsylvania, who addressed the House yesterday. The gentleman had said, that, in selecting the object on which the Government should bestow its patronage, reference was to be had to the different amounts of revenue collected in different parts of the Union: and that those States where the revenue was collected, had a prior claim to States where it was not. Sir, this is a principle which I utterly disclaim; although, as one of the Representatives of the State of New York, I come from a State where a much larger amount of revenue is collected than in the port of Philadelphia. Another gentleman, in the course of his remarks, had said that the harbor of New York is now secure, and if the proposed improvement in the harbor of the Delaware does not take place, much of the commerce of Philadelphia will be invited to New York. Sir, the gentleman is mistaken in point of fact; the harbor of New York, instead of being rendered secure, is, in reality, scarcely defended at all: it is naked of defence: it has only one fort of any practical utility, which is Fort Lafayette. The report of the Engineers recommended the erection of six different works for the defence of that port; but of these only one has been commenced, and that one is the least of all that were proposed. The gentleman seems to infer, that, because much money has been spent, the harbor must, of course, be safe; but he doubted if it would successfully keep out a single seventy-four. But, though the proportion of revenue collected, to moneys spent in defence, was greater in New York than any other city of the Union, he was far from urging the smallest claim on such a ground; on the contrary, he repeated his protest against the doctrine.

The gentleman says that the public resources are to be distributed, either according to the relative importance of different national undertakings, or according to the population of the different States, for purposes of internal improvement; and that the latter was the opinion of a former President. The objects on which the President thought these surplus funds should be expended, were not great national works like that contemplated in the Delaware, but objects of a local importance, as schools, roads, &c. But since Congress had determined on exercising powers which certainly were never intended by the framers of the constitution, (though they might perhaps be covered by its terms,) they were bound to exercise them, in the first place, for the general defence. This was one main object in adopting the Federal Government. The old Congress had the power of peace and war, as much as the present Congress has, but it possessed no means of defending the country, because it had no revenue. The revenue of all the States being now placed in the control of Congress, the first object to which it should be applied is the public defence, then the payment of the

public debt, and then the encouragement and protection of commerce. Before the gentleman from Pennsylvania can claim an application of a portion of the revenue, collected at Philadelphia or elsewhere, to the object he has in view, he is bound to show that the whole country is amply defended, its commerce protected, and its debt paid: then he may claim that its surplus resources may be divided; but till then, Mr. W. held, that Congress was not at liberty to give the national funds away in any manner, to the prejudice of the great object he had mentioned. If a fortification is required on the Missouri, on Lake Pontchartrain, or for any of our commercial cities, it must be erected, before we can go to objects like that proposed in the Delaware. It is public necessity which gives a right to priority in respect to appropriation. If we adopt the narrow local principle which had been avowed by gentlemen, it will embarrass all the proceedings of the Government; will lead to painful contests of State against State, and result in a legislation of compromise, instead of a legislation governed only by public utility. His whole objection applied to the principle on which this call is to be made. Gentlemen say they want it for the purposes of showing that more revenue is collected at Philadelphia in proportion to the sums expended in defence, than either at Boston or New York. But as to works of defence, Philadelphia is better defended than any other commercial city in all the Union. The Board of Engineers have reported to this House, that the fort at the Pea-Patch is a complete defence of it.

Mr. WYMS said he was unwilling to occupy the time of the committee with a further discussion of this subject, and should have suffered the fate of his colleague's resolution to be determined by a silent vote, had the gentleman from New York stated the arguments of his colleagues and himself with fairness; but he seems to have conjured up a ghost, only for the pleasure of laying it himself. No such doctrine had been advanced as the gentleman imputed; on the contrary, they had both disclaimed it. They went no farther than to state a case, by way of illustration, whether, supposing there were two cities, which required works of protection, and at one of them much larger sums had been expended for the object than at the other, although the one least defended yielded the greatest revenue of the two, an argument would not lie in favor of granting a new expenditure at the latter rather than at the former. He admitted that those who may hereafter advocate the propriety of erecting a breakwater in the Delaware Bay, will be bound to show that it is intrinsically a national object, and one that deserves the appropriation it will cost; but if, when they have done this fully, they shall be able to show, in addition, that less of the public moneys have been expended there than in other places, though equally needed, will it not add strength to their

appeal in behalf of the improvement? The gentleman from New York will answer, that if we are able to establish the fact, that the work we ask for is needed—that it is a work of national utility—we have done all we are permitted to do: we must stop there, and leave the question on its own naked merits. Sir, it is a beautiful theory; but, unhappily, it is a theory only, that objects will get forward in this House by their merits alone. He thought he might, without being guilty of disrespect to the House, be permitted to say, that a measure was not always able to work its way by such arguments. He might appeal, in confirmation of this position, to a very recent case: In the debate on the Judiciary, it had appeared, by statements of gentlemen from the West, that some remedy to the evils existing there had long been sought, and the case, with all its strong appeals to the justice of this House, had been presented, session after session, yet it was not until now that any relief had been obtained. He might, therefore, be pardoned, in supposing, that it would not be all-sufficient to show that a breakwater was needed in the Delaware Bay, on great national considerations—it was desirable to press on the House other arguments in addition to the simple expediency of the object itself. But if, when the information sought by the resolution is used in the heretical manner supposed by the gentleman from New York, it will be time enough then, to expose the unsoundness or narrowness of the principles on which it is attempted to be applied. But it would not be hard to show, by a reference to past legislation, that such were not the principles held and acted upon by the public men of Pennsylvania. Look, as one instance, at the appropriation for the Cumberland road. Did Pennsylvania advocate that appropriation on a mere local or interested policy? Was that road calculated to benefit her? Did it not tend to draw from her eastern seaport, and her western Birmingham, the current of population and of trade, for the improvement of Ohio? He might point, as another example, to the Ohio and Chesapeake Canal Company; that canal did not surely address itself, with any very strong claim, to the sense of mere local interest in Pennsylvania. The course now charged upon the Pennsylvania delegation, had never been pursued by them, and he regretted that such an imputation had fallen from one of the representatives of the great State of New York. She has power and influence enough in this House to crush the measure proposed for the improvement of a sister State, and for the benefit of the commerce of a neighboring city, while she is herself in no danger of being impeded or put down; but he had expected more of magnanimity than would be betrayed by such a course. As to hunting this information through the journals of the House, the same answer might be made to almost any motion for a call of papers; but he was sur-

prised such an argument should be urged against the present resolution, (and one other of a similar kind, from Pennsylvania,) while it was not advanced against the very frequent calls which have been proposed and agreed to at the present session.

Mr. STORRS observed, in reply, that, as one of the delegation from New York, he would only say that, if he and his colleagues were governed by the principle on which the advocates of the resolution had argued, instead of opposing this call, they would give it their most hearty support. They must, at least, be acquitted of all intention to injure Philadelphia, in their opposition to it; because, if the principle be correct, that those cities are to have a preference where the revenue bears the largest proportion to the public expenditures, Philadelphia must long be postponed. Nothing could be more convenient to them and their constituents, than such a comparison; for, it would be manifest to all, that on such a principle the expenditure must begin in the harbor of New York; but he could not reconcile the principle with any of his views of propriety. It strikes a blow at the entire system of our internal improvements. He had always thought that the project of distributing the surplus revenue among the States, in proportion to their population, was extremely objectionable; and entirely inconsistent as it was with his understanding of the constitution, that, should such a law pass both Houses, it would, in his opinion, be the duty of the President to put his *veto* upon it. If it is supposed constitutional to enter a system of internal improvements, it must be shown altogether from the constitution itself, and not on the principle which referred to the points at which the national revenue is collected. Any principle of favor to any of the States, was one which could not be admitted. The gentleman from Pennsylvania asked the House to compare the amount of revenue collected in her harbors, with the money expended there on forts and light-houses, as an argument why she should have this breakwater. But, do the gentlemen consider how this principle is to operate on other States? Take, for example, the State of North Carolina. What would she receive on such a plan? Nothing, sir; nothing at all. The amount actually expended on light-houses and fortifications, built, or ordered to be built, would be greater than the whole amount of revenue collected there. The same observation might be applied to Savannah. What would become of Rhode Island? What is the amount of revenue collected in Narragansett Bay? And if the argument applies one way, gentlemen must remember that it applies the other way also. If much revenue is to have much defence, then no revenue is to have no defence. The principle strikes at the whole system of internal improvement. Congress made an appropriation for the Cumberland road: was that on the principle of expending the public money west

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*Breakwater in the Delaware.*

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of the mountains, and for the benefit of this or that particular State? Not at all. It was granted to be expended on a great national work, eminently conducive to the welfare of the country as a whole. So Congress subscribed 800,000 dollars in aid of the Delaware and Chesapeake Canal. Did they do this for the commercial interest of Philadelphia in particular, or of Baltimore in particular? Not at all. Local interest was not the point on which that measure was supported. It was argued by the gentleman himself, from Pennsylvania, on the ground of its being connected with the interests of the nation at large.

Entertaining these views, Mr. S. said, that, in appropriating for any improvement, he should direct his views to the whole Confederacy. He should not stop to ask how much revenue was collected at Philadelphia: for, if this work in the Delaware exceeded the amount of that revenue, ten times over, he should, nevertheless, vote for it, if he conceived it expedient and proper, in a national point of view. But, if we are to go on the ground of favoring the States, justice to his constituents would require that he should vote for beginning with his own State first. If this measure of the breakwater was to be placed on the principle of local legislation, he should vote against it altogether: a course he should be sorry to adopt, because he felt favorably impressed in regard to its propriety. But, independently of all this, what is the information asked for? First, for the revenue collected; and then, for the moneys expended in the building of forts, the erection of light-houses, beacons, buoys, &c., for the protection of commerce. But, asked Mr. S., why did gentlemen stop here? Why do they not go back to the period when Philadelphia was the seat of Government, and inquire what sums were spent there, in consequence of the presence of the Government? What was expended on the Navy Yard? What was laid out in the salaries of all the public officers? What was subscribed to the Delaware and Chesapeake Canal? What amount of the provisions and clothing of the army was purchased there? How much money the members of Congress expended there? (No mean item in the account, if living is as dear there, as it is in this city.) The mere mention of these subjects of inquiry was, in itself, sufficient to show how unsatisfactory any argument must be, which is attempted to be built upon such an investigation. It was impossible to determine. If gentlemen had every letter and figure before them, and even submitted to the House any thing like the comparative amount of public money that had been expended in different places, the account must be imperfect at the best; and if it is imperfect, it proves nothing. His great objection to the call, however, was not on this latter ground, but on considerations of principle. What he had at first stated, as to the work itself, he repeated, that his views at present were in its favor.

Mr. McLANE, of Delaware, said that he should not have been in favor of presenting this resolution to the House; but, as it had been presented, he hoped the House would not see in it any thing so very formidable as to prevent its adoption. He perfectly concurred with the gentleman from New York in the principles he had laid down, and he believed and hoped there were no gentlemen on that floor in favor of acting on the opposite principle; but there was no need to consider that question now. What is the House considering? The propriety of making an appropriation for this breakwater? Not at all. Was any question before it relating to internal improvements? There was none. Was it now asked to facilitate the commerce of Philadelphia? It was not. All that was asked, was information. And two questions only were to be settled. Is the information itself material to enlighten our judgments, in respect to the great interests of the country? And is it improper to make it public? No gentleman would insist that it was improper to make these facts public. They are public already. It would be the duty of the public officer to present every one of them to the House, whether they were called for or not.

They are all spread on our public documents, and may, though with great labor, be collected from the files, by any member of this House. The resolution calls for the amount of revenue received, and of moneys expended, on improvements within the Bay of Delaware. Was it an answer to say that gentlemen in making this inquiry, were influenced by a certain motive? Surely not. And it would not do for the gentleman from New York to say that he will not suffer a certain item of internal improvement to be made, because other gentlemen advocate it on a principle he disapproves. Let the gentleman from New York judge for himself, but let others do so too; and do not prevent them from getting all the information they may deem necessary, because they may found, upon that information, some argument they may think false. Besides, how can the gentleman prevent the friends of this resolution from getting this information? I, said, Mr. McL., can get it, whether the House passes this resolution or not. It will cost us some labor, but, if the House refuses to call on the President for this information, we can, we will obtain it for ourselves. The information is not improper, and why are we not to have it? For myself, I should consider myself bound, in courtesy, if any gentleman says he requires certain information for the right performance of his duty, to consent he should have it. The House, by agreeing to this call, establishes no principle. If it did, I should certainly reject the resolution. But the House is left wholly uncommitted. I, too, am in favor of this breakwater. But I shall take a different mode to show it from that pursued by the gentleman from New York.

At this point the Speaker interfered, and

arrested the further progress of the debate, the time appropriated to the consideration of resolutions having expired.

*Amendment of the Constitution—Election of President and Vice President.*

The House then, on motion of Mr. McDUFFIE, resolved itself into a Committee of the Whole on the state of the Union, Mr. McLANE, of Delaware, in the chair, and proceeded to the consideration of the following resolutions, moved by Mr. McDUFFIE, on the 19th of December last, viz:

*“Resolved, That, for the purpose of electing the President and Vice President of the United States, the constitution ought to be so amended, that a uniform system of voting by districts, shall be established in all the States; and that the constitution ought to be further amended, in such manner as will prevent the election of the aforesaid officers from devolving upon the respective Houses of Congress.*

*“Resolved, That a Select Committee be appointed, with instructions to prepare and report a joint resolution embracing the aforesaid objects.”*

These resolutions having been read—

Mr. McDUFFIE addressed the committee as follows:

Mr. Chairman: The resolution which has been referred to the consideration of the committee, is resolvable into two distinct practical propositions, as plain and obvious in their import as they are unquestionably important in their tendency. The first contemplates the establishment of a uniform mode of voting, by districts, for the President and Vice President of the United States, instead of leaving to the Legislatures of the respective States, either to prescribe and vary the mode of voting, or to assume and exercise that important function themselves. The second proposes that, in the event of no person receiving a majority of all the electoral votes, at the first balloting, some provision shall be made for the final disposition of the contest, that will supersede the eventual interference of either branch of Congress, in the election of the two chief Executive Magistrates of the Republic. As the resolution does not declare whether it is expedient that the electors should be dispensed with or retained, nor indicate the substitute by which the final election shall be prevented from devolving upon Congress, I will very briefly state the details of the proposed amendment, in reference to these particular objects.

As the electors, if retained at all, would hold their first balloting immediately after they are chosen, and under circumstances that would almost preclude the possibility of tampering or corruption, I am willing to acquiesce in any decision that a majority of the committee may make, upon the question of retaining them in the first instance. For, although I do not believe the electors to be of any possible utility in the system, and can perceive considerable objections to retaining them even thus par-

tially, yet, if a majority of the committee should think differently, I will cheerfully sacrifice this minor consideration, to ensure the accomplishment of the great object of the contemplated amendment.

But, in case the primary vote of the Electoral Colleges shall fail to decide the election, I propose that the two highest candidates, respectively, shall be referred back to the people, voting directly for the President and Vice President by districts. For, when it is considered that at least three or four months must unavoidably elapse between the first and the second balloting, the argument against retaining a body of electors for so long a period exposed to temptation, becomes, in my judgment, irresistible. And, in addition to this view of the subject, when the contest is reduced to a simple issue between two competitors, there is an end to all the conceivable reasons for a discretionary agency, and the interposition of electors can only be regarded as, at best, a useless incumbrance.

Such, Mr. Chairman, is the brief outline of an amendment, which so emphatically speaks its own importance, that I need scarcely invoke the patient and undivided attention of those, who, under the most solemn responsibility to the present and future generations, are to pronounce and record their judgments upon it.

The first branch of the resolution we are considering, declares the expediency of establishing a uniform system of voting, by districts, for the President and Vice President. By adverting, for a moment, to the existing provisions of the constitution on this subject, it will be perceived that the important operation of electing the two chief Executive officers of the United States is not regulated by *any constitutional rule whatever*. The constitution, by declaring, that “each State shall appoint the electors, in such manner as the Legislature thereof may prescribe,” puts an unequivocal negative upon the idea of fixedness and permanence, which essentially enter into the elementary notion of constitutional regulation. Different rules prevail in the same State at different times, and in the different States at the same time, all liable to be changed according to the varying views and fluctuating fortunes of political parties. It may be assumed as a political axiom, that those creative acts of popular sovereignty which bring the machine of Government into existence, and put it in motion, ought to be placed beyond the power of any legislative control whatever. The reason is obvious. This superior stability of the fundamental law is essential to protect the rights of the minority from the injustice and oppression of the majority. All experience proves that it is in the very nature of political parties to “feel power and forget right.” The end which every party proposes to itself, as the object of its united effort, is power. In the pursuit of this object, the majority lose that sense of justice which should protect the rights

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of the weaker party. They easily persuade themselves that the good of the country will be promoted by excluding their opponents from power, and, under the delusive belief that they are sustained by patriotic motives, they commit the most flagrant acts of outrage upon the minority. What, sir, has been our own experience on the subject? Some ten or fifteen years ago, the dominant party in the State of Massachusetts made an artificial arrangement of the districts, so as to exclude the minority from power almost as completely as the change from the district to the general ticket system would have done it. After the individual, I believe, who was principally instrumental in bringing about this scheme of party tyranny, it is known over the whole Union, by the name of the *Gerrymandering* system. The people were roused to indignation, not only in Massachusetts, but throughout the United States. Under a lively sense of the injustice and oppression of this proceeding, and of perhaps some analogous occurrences in other States, the proposition for establishing a uniform district system of voting for the electors of President, was brought forward by North Carolina—a State which, to her other claims to consideration in the Union, adds a steadfast and uniform adherence to sound Republican principles. This proposition was concurred in by a large majority of the Legislatures of the States, and, amongst the rest, two of the largest States in the Union, New York and Virginia, adopted it by an almost unanimous vote of their respective Legislatures.

Proceeding to examine these several plans, in the order in which I have stated them, I shall very briefly dispose of the first. As to the power which the Legislatures of most of the States have assumed, at one time or another, of choosing the Presidential electors themselves, I feel assured that I shall have the concurrence of a large majority of those who hear me, when I pronounce it a usurpation. Yes, sir, the very first acts of the State Legislatures, in relation to the election of the President, furnish the best refutation of the doctrine held by some gentlemen, that the State Legislatures ought to retain an agency and control in the election of that officer. We see that these Legislatures can usurp power as well as abuse it. To settle this question, as to the power of the State Legislatures, a few remarks only will be necessary. The words of the constitution are, that “each State shall appoint” the electors of President “in such manner as the Legislature thereof may prescribe.” The State makes the appointment, and the Legislature has only the power to prescribe the mode. That the word “State” means the people of the State, is obvious, not only from its ordinary grammatical import, standing contradistinguished from the word “Legislature,” but also from the commentary contained in the Federalist, which, considering the authority of that celebrated exposition, supersedes the necessity of any further argu-

ment on this point. In a number written by Mr. Hamilton, relative to the appointment of the President, we find the following decisive words: “They have not made the appointment of President to depend upon pre-existing bodies of men, who might be tampered with beforehand, to prostitute their votes, but they have referred it, in the first instance, to the immediate act of the *people of America*, to be exerted in the choice of persons, for the temporary and sole purpose of making the appointment.” Assuming, then, that the power heretofore exercised by the State Legislatures, has been without the warrant of the constitution, I shall proceed to compare the only two remaining modes of voting, that have prevailed in the different States.

The first objection which I shall urge against the general ticket system, is, that it not only destroys the vote of the minority in the State, but actually transfers the votes which that minority give in favor of one candidate, to another. We know that, in almost every State in the Union, there generally exists a division of opinion amongst the people, on the subject of the Presidential election. Assuming that the people of New York, for example, should be thus divided in opinion, in the proportion of nineteen thousand for one candidate, and seventeen for another, what, let me ask, is the effect of the general ticket, upon the vote of that State? It forcibly gives the vote of seventeen thousand citizens to the candidate *against* whom they actually voted. The very votes which the *people* intended to defeat his election, are, by the State, wrested from their legitimate aim, and made subservient to the advancement of a man, who may, perhaps, be an object of abhorrence to the very people who are thus compelled into his service. It is thus, sir, that, under the delusive and mistaken idea of preserving the rights of the States, we sacrifice the fundamental principles of the Republican system. We literally immolate the *people* by thousands and myriads, at the shrine of an ideal phantom. But we shall be told that it is the duty of the minority to submit to the will of the majority. This, sir, is an obvious truth; but I beg gentlemen not to be misled by it. It has no application to the question I am considering. I am not complaining that the minority are compelled to submit, but that all the minorities in the States are *annihilated*, in making up the general aggregate of the whole Union, as if they were immaterial powers in a political equation. And the reason why I do complain of this is, that it gives the minority in the Union a chance for ascendancy equal to that enjoyed by the majority.

But, Mr. Chairman, the real question which we are called upon to decide, is, whether we will establish the district system, or have no system at all. It is certain, from the known state of public opinion on the subject, that the people will never consent to the establishment of a uniform general ticket system, by



an amendment of the constitution. Shall we, then, rather permit the existing state of constitutional laxity to continue, than adopt the district system?

In estimating the dangers of the present state of things, I have often considered that Providence has been kindly regardful of us, or we should have been long since involved in the most disastrous civil conflicts. Perhaps we owe this fortunate exemption, in a considerable degree, to the moderation and temperance of our national character. But unless the constitution is fixed upon some certain foundation, there is serious ground for apprehending the occurrence of the most delicate and embarrassing question at no distant period. I will state a case that may probably occur at the very next election, and request gentlemen, if they can, to solve the difficult question involved in it. New York, we know, is now divided into electoral districts, by a law which is admitted on all hands to be constitutional. Suppose the Legislature of that State, under the plausible pretext of preventing the division of the elective power of the State, were, on the eve of the next Presidential election, to re-assume the power which they formerly exercised, and appoint the Presidential electors. Suppose the people of the existing districts, maintaining this act of resumption on the part of the Legislature, to be unconstitutional, were to vote for electors, different from those chosen by the Legislature; and that, under these conflicting titles, two pretenders should claim the sceptre of Executive power. This would be a contest which could only be decided by a civil war; and we should have a commentary on our present system written in blood. This is no imaginary difficulty. I solemnly declare, that I am utterly incapable of deciding which of the two competitors would be the real President, and would thank any gentleman for his assistance who thinks he can solve the difficulty. To one candidate I would say, you have the constitution on your side; to the other, you have on yours the practice of most of the State Legislatures, and the acquiescence of the country. And yet the question now presented is different from any that has heretofore occurred, because the law establishing the district system being clearly constitutional, peculiar ground is furnished for regarding the legislative assumption as an unconstitutional act. Such a question, sir, would never be decided by dispassionate reasoning. Passion, strife, blood—these are the elements that would enter into the argument.

I shall proceed now, Mr. Chairman, to consider an objection to the district system, which I shall examine with more attention, from the respect I entertain for the gentlemen who urge it, than its intrinsic importance would otherwise demand. It is conceived that the proposed system tends to destroy the sovereign rights of the States, and to produce what is denominated consolidation. Now, sir, if I cannot show that the tendency of my proposition is

the reverse of that which is ascribed to it in these respects, I will surrender the scheme as indefensible. To a correct understanding of the objection I am considering, a precise and definite conception of the State powers affected by the proposed amendment is indispensable. As long as we deal in vague generalities, we shall certainly be involved in confusion, if not in error. What, then, are the powers which I propose to take away from the State Legislatures? The power of voting directly for the electors of President, which will be admitted to be a usurpation, and the power to change the district into the general ticket system. So far as the proposition tends to prevent future acts of usurpation by the State Legislatures, it must be admitted to be salutary. The only power, then, which merits a moment's consideration, is the power of changing the mode of giving the popular vote. Is that a power that ought to belong to any legislative body? Is it not obvious, as well from our own experience as from the nature of things, that it is a power which will only be exercised abusively, and for the accomplishment of party purposes? What other conceivable purpose can it answer? I will venture to assert that, in every instance in which the district system has been made to give way to the general ticket, party objects have constituted the avowed motive of the change.

But, sir, on this subject of State rights, let me warn gentlemen to beware of running the national barque into the vortex of real danger, while attempting to escape from those which are purely imaginary. They regard the State Governments as sentinels, standing on the watch-towers of liberty, and yet place those governments in a relation to the General Government that must destroy both their fidelity and vigilance. I have shown, sir, that where the general ticket exists, the State Legislatures, by nomination or other modes of indication, will, in practice, control and decide the vote of the State, for President. By bringing the State Legislatures into the operation of choosing the President, you make it the duty of those to sound the alarm of approaching tyranny who have been themselves instrumental in making the tyrant. It would be just as wise to expect the disclosure of a felony by a participant in the perpetration of it. The true mode of preserving the guardian vigilance of the State Legislatures is to keep them entirely out of the sphere of the Presidential canvass. Let them stand by, as disinterested spectators, while the people choose the President. It is thus only that they can be preserved in the attitude of sentinels.

Allow me now, sir, to go a little farther on this subject, and ask gentlemen if it has never occurred to them, that the State Governments may communicate an artificial energy, a morbid action to despotism in the General Government.

Upon what principle is it assumed that the State Legislatures will be always on the side of

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liberty? Does our experience warrant the supposition? I beg that gentlemen will do me the favor to open their eyes, and look around them at political events that are passing almost the very moment in which I am speaking. Have not attempts been made during the present session by the resolutions of State Legislatures, to goad our sluggish pace and stubborn temper into a celerity and pliancy more compatible with the views of the Executive Government? Such, sir, is the frail security of liberty, when we rely exclusively upon holding one power in check by another, instead of subjecting all to the control of the people. The experience of all nations that have made the experiment demonstrates, that it will eventually result in a meretricious combination between the powers designed to act as checks on each other. What was the real power to which the fathers of the Republic looked with dread and apprehension? Not the legislative power of this House, but the power of Executive patronage. Upon whom is it that this power is likely to exert the most dangerous influence? Unquestionably, sir, upon small pre-existing bodies, like the State Legislatures, and not upon the mass of people. The people of a single electoral district would be more difficult to move, by Executive patronage, than the Legislature of a whole State. And I will venture to assert, that there is not one of those districts, in the whole Union, that could have been induced, without any information on the subject, to instruct their representatives here to give their support to a particular measure of the Executive Government. Sir, a President coming into power by the aid and concurrence of the State Legislatures, would be irresistible. These bodies would lull the people into false security, and, while professing to defend, would actually betray their liberties. But the most extraordinary objection that I have yet heard urged against the district system, is its tendency to produce consolidation. What, let me ask, do gentlemen mean by the term consolidation? Do they use it as synonymous with union? If that be the case, I admit that the tendency of the district system will be to "consolidate the Union;" the very thing which the Father of his Country declared to be the primary aim of the Federal Convention, in framing this Government. But, that consolidation which is really dangerous to liberty, and which would destroy the federative character of our Government, is the concentration of power in the Government *here*. In this sense of the term, I deprecate consolidation as much as any man, and the tendency of my proposition is to produce a result almost precisely the reverse of this. Instead of concentrating power into the hands of the Government here, it diffuses the most important of all powers among the great body of the people, and fixes it there irrevocably.

It seems to me that a new reading of State rights is now, for the first time, introduced. I have always regarded State rights as standing in contradistinction to the powers of the Gen-

eral Government. But now the rights of the *States* are brought out in array against the rights of the *People*. How can it be conceived that we impair the rights of a State, by vesting the highest prerogative of sovereignty in the people of that State? Virginia, voting by districts, is Virginia still—divested of none of her attributes as a separate member of the confederacy. God forbid that I should propose any thing so absurd as to break down the barriers which separate her from the rest of the Union, and let in any foreign influence to control her political operations. I do not propose to impair the federative character of the Government in the slightest degree. Each State will give precisely the same number of electoral votes for the President that she is now entitled to give under the existing provisions of the constitution.

But the concluding argument which I shall urge in favor of the district system is this: The small States will never consent to give up their eventual equality in voting for the President in this House, unless the large States will consent to break their power of concentration and combination, by the establishment of the district system. In reference to this indispensable compromise, all the arguments which go to demonstrate the expediency of depriving this House of the contingent power of voting for the President, are so many arguments in favor of the district system.

THURSDAY, February 16.

*Amendment of the Constitution—Election of President and Vice President.*

Mr. McDUFFIE resumed his speech, as follows:

This brings me (said Mr. McD.) to the consideration of the second and incomparably the most important branch of the amendment—that which provides, that, in the event of a failure of the primary electoral vote to decide the election, the two highest candidates shall be referred back to the people, instead of referring the three highest to the House of Representatives.

In entering into the investigation of this part of the plan, which illustrates the genius of the whole amendment, I propose to develop what I deem to be the true principle of liberty, in the organization of our system of Government. In all the free Governments that have existed, it will be found, upon examining their structure philosophically, that their liberty was resolvable into some fundamental principle, and that the final loss of that liberty was owing to some inherent defect in that fundamental principle. The great conservative principle, then, that pervades and sustains the whole machinery of our Government, is the responsibility of public functionaries to the people. From its exact analogy to the principle which sustains the harmony of the material universe, it may be appropriately denominated the gravitation of our political system. And in looking forward to the brilliant and glorious destinies that open upon his vision,

the hopes of the American patriot will cling to this, as the safe and steady anchorage that will enable us to ride out the storms that have overwhelmed the liberties of all other Republics. It results, from the very nature of our scheme of Government, that, in proportion as the power of the functionary is increased, should be the directness and efficiency of his responsibility to the people. Responsibility and power are the antagonist principles of the system, and its perfection consists in their equipoise. Without this equipoise, the eccentric movements of power will as inevitably destroy our free system of Government, as the suspension of the centrifugal or centripetal power in the planetary system, would destroy the equilibrium of the universe. If we will attentively consider the nature and tendency of Executive power, we shall be satisfied, that, of all the kinds of power that enter into the system of Government, none requires so decidedly the restraining influence of the principle of responsibility. There is no power more active, encroaching, and dangerous, operating, as it does, through the influence of its patronage, upon the hopes and fears of a large portion of the community. But, by rendering the President directly responsible to the people, we shall solve the great problem, never before fully realized, of uniting in the government of so extensive a country, the elements of liberty and power. All the essential powers of sovereignty may be safely entrusted to a Government emanating directly from the people upon whom it is to operate. In this particular, ours is distinguished from most of the free Governments that have been known to history. Every attempt to secure liberty by withholding those powers which are necessary for the defence and security of the nation, must speedily end in the loss of that liberty. They have always ended so. No generous and high-minded people can long tolerate the existence of a Government that is not capable of defending them. Such a Government is inevitably destined to pass from a rickety state of feebleness and distraction, through anarchy, to despotism. Hence, the importance of that peculiar organization, which enables us to clothe the President with such extensive powers, without endangering public liberty.

I am not, I trust, one of those visionary advocates of the abstract rights of man, that would extend the power of the people farther than is conducive to the happiness of the political society. It is idle to suppose that the people can have any rights incompatible with their own happiness. Although, therefore, I have shown, that they are necessarily virtuous from their position, yet I admit, that patriotic intentions would furnish no adequate security for the wise selection of a Chief Magistrate, in the absence of sufficient intelligence. It would be a vain and delusive mockery, to invest them with an elective power, which they could only exercise to the destruction of that which is the

end of all government—the national good. There is no political truth more worthy of the attention of a practical statesman, than that the freedom of the people cannot rise higher than their intelligence. Such is the indispensable condition of freedom; and all the attempts which have been made in modern Europe to render Government more free than the intelligence of the people would warrant, have resulted in bloody and disastrous reaction. I do not hesitate, therefore, to admit, that the people have no abstract right to any power, which they cannot exercise with intelligence. It is true, then, that the people of the United States have not sufficient intelligence to choose a President?

On this subject, we are told, that history furnishes no example of a chief Executive magistrate chosen directly by the great mass of the people. This, sir, is a melancholy truth; and it furnishes the true solution of the fact, that there never has existed a Republic that has lost its liberty.

It is easy to demonstrate, that, previous to the establishment of this Government, liberty never had any thing like a fair experiment. This, sir, will conclusively appear, when we come to consider historically and philosophically the causes, why it is that the chief magistrate of an extensive country never has been chosen by the great body of the people. But, then, has this happened?

As all the Governments of modern Europe had their foundations laid in the principles of the feudal system, the only experiments upon the republican system which deserve to be recorded in history, are those made by the ancients.

Now, the election of a chief magistrate by the mass of the people of an extensive community, was, to the most enlightened nations of antiquity, a political impossibility. Destitute of the art of printing, they could not have introduced the representative principle into their political systems, even if they had understood it. In the very nature of things, that principle can only be co-extensive with popular intelligence. In this respect, the art of printing is more than any invention since the creation of man, is destined to change and elevate the political condition of society. It has given a new impulse to the energies of the human mind, and opens new and brilliant destinies to modern republics, which were utterly unattainable by the ancients. The existence of a country population, scattered over a vast extent of territory, as intelligent as the population of the cities of antiquity, was a phenomenon which was utterly and necessarily unknown to the free States of antiquity. All the intelligence which controlled the destiny and upheld the dominion of Republican Rome, was confined to the walls of the Great City. Even when her dominion extended beyond Italy to the utmost known limits of the inhabited world, the city was the exclusive seat both of intelligence and empire. Without the art of

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printing, and the consequent advantages of a free press, that habitual and incessant action of mind upon mind, which is essential to all human improvement, could no more exist, amongst a numerous and scattered population, than the commerce of disconnected continents could traverse the ocean without the art of navigation. Here, then, is the source of our superiority, and our just pride as a nation. The statesmen of the remotest extremes of the Union can converse together, like the philosophers of Athens, in the same Portico, or the politicians of Rome, in the same Forum. Distance is overcome, and the citizens of Georgia and of Maine can be brought to co-operate in the same great object, with as perfect a community of views and feelings, as actuated the tribes of Rome, in the assemblies of the people. It is obvious, from these views of the subject, that liberty has a more extensive and durable foundation in the United States, than it ever has had in any other age or country. By the representative principle—a principle unknown and impracticable among the ancients, the whole mass of society is brought to operate, in constraining the action of power, and in the conservation of public liberty. The extent of territory, which, by the operation of fixed and obvious laws, caused the Roman Republic to sink under its own cumbrous weight, is our best security against a similar catastrophe. The extensive provinces of that Republic, incapable of being brought into the constitutional action of the political system, presented a mass of unenlightened brute force, unconnected with the Republic, by political sympathy or interest, and ready to be wielded by any military adventurer, for the overthrow of public liberty.

In adverting, and I do it with peculiar pleasure, to the situation, and probable destiny of the United States, as contrasted with those of other nations, I would ask, emphatically, what would be the condition, what the security of our liberty, if it were dependent upon any single city? Sir, all cities, however intelligent and virtuous, must, from the very structure of their society, have a populace of greater or less extent, which, when roused to action, by any extraordinary excitement, are impelled by mutual sympathy, and the contagion of feeling, resulting from contact, to acts of turbulence, riot, and outrage. In a word, they degenerate into a tumultuous rabble. I will take Boston for an example, as furnishing the strongest illustration—a city, which I cannot mention, without having excited in my breast strong emotions of reverence, connected with the proudest recollections of our Revolutionary history. In this city, sir, inhabited by the unmixed descendants of the genuine old English puritans—in this city, distinguished for the general intelligence and steady moral and religious habits of its citizens—in the cradle of American liberty, and the emporium of American literature and arts, what is the spectacle we have recently witnessed? We have seen a miserable strolling player, an outcast from his native country, throw the whole city into a scene of riotous commo-

tion, that might have swept away the liberties of the Republic, had they depended upon so frail a security. But I thank God that the liberties of this country do not rest upon the trembling and unsteady basis of any city—neither Athens, nor Rome, nor Boston—but on the intelligence of the great mass of the people, scattered as they are, over our widely extended surface.

Upon the question of the capacity of the people to choose the Chief Magistrate, I would remark, that the citizens of all free countries have been found competent to the selection of the highest officers. For the last half century, the talent that has governed England, notwithstanding her artificial distinctions, has been brought forward by the people, and has made its way to power through the House of Commons. Of the distinguished statesmen who have figured in her councils during that period, I know scarcely a single exception. Pitt, Castlereagh, and Canning, were all indebted to the people for their political elevation; and it is certain that no statesmen in modern times, have exerted a more decisive influence over the current of human affairs; whether for good or for evil, it is not now material to inquire. But, sir, let us come a little nearer home, and consult our own experience upon this point. Out of the six Presidents who have been called to preside over the Republic, five have been the unquestionable choice of the people of America. Looking back upon the history of the past, with the impartiality of posterity, and the benefit of subsequent experience, we can have no hesitation in admitting, that the selection of the people has been the very best that could have been made. In fact, such is the course of political service through which a statesman must ordinarily pass before he can aspire to the Presidency, that it would not be going too far to say, that the people are more capable of selecting that officer, than almost any other public functionary. It is much easier to form a just estimate of a statesman, by palpable measures of wisdom and foresight, than to discover and bring to light latent capacities that have never been exhibited in the theatre of political action.

But, sir, let us, for a moment, compare the Presidents chosen by the people, with the officers chosen by those Presidents. It is a subject of curious speculation, and will lead us, I think, to a very decided conclusion, that the people are more capable of choosing the President, than the President would himself be to choose his successor. Sir, what criterion of talent have our Presidents adopted in the organization of their cabinets? They have either adopted the popular standard, and promoted those who had been previously distinguished, or they have exhibited the most signal infelicity in their choice. How many instances can be shown of statesmen, of first rate talents, brought into the Executive Government, who had not first distinguished themselves here as the immediate representatives of the people? I will particularly refer to the Administration of Mr. Madison, for whose

character, as a profound statesman, I entertain the highest respect. He was, at the same time, a monument of the capacity of the people to choose public agents, and of the frailty of any other reliance. For, if I may speak with the freedom of history on such a subject, his cabinet was most wretchedly feeble, and from no cause more strikingly so, than from the attempt to discover the secret treasure of talents that had escaped the searching sagacity of the people.

It is not unworthy of remark, that there is no officer in whose election the people are so likely to be actuated exclusively by patriotic and elevated motives, as in that of the President of the United States. Personally unknown to the great body of them, and seen only through the medium of his deeds and his character, they can have no personal predilection or interested motive, to swerve them from the dictates of wisdom and patriotism. On the contrary, in the election of mere local officers, and particularly those ministerial officers of the law, whose official duties have a bearing upon the pecuniary interest of the debtor and creditor classes of the community, it not unfrequently occurs that even the people are actuated by factious motives. And this from the only cause that can produce such motives—the existence of an individual interest in the election, different to the public interest, and paramount to it.

But, sir, I must hasten to consider another objection that has been urged against referring the election of the President directly to the people. We have been told, from high authority—an Executive message of one of the States—that it will produce popular excitement and turbulence. It does really appear to me, sir, that the grave statesmen of the country are mistaking, on this subject, the images of their classic recollections, for the sober and substantial realities of life. They seem to forget that they are not walking in the groves of Athens, nor mingling in the conflicts of the Roman *Comitia*. They permit themselves to be carried away by false and delusive analogies. I believe it would be a vain attempt to try to rouse the people to scenes of turbulence and strife, on the subject of the Presidential election. The extent of our territory, and the dispersion of our population, circumstances once deemed incompatible with Republican freedom, are our absolute guarantees against those stormy commotions that distinguish the history of simple democracies. I do not believe it would be possible to excite even Boston to a riot on the subject of the Presidency, although Kean, the player, roused the mob to acts of violence: for, by the district system, Boston would only have one electoral vote, and that would scarcely be an object of sufficient magnitude to produce such consequences.

This idea of exciting the people to violence on the Presidential election, is founded on absolute inattention to the situation of our country, and would be scarcely excusable in a youth at college, in his sophomore year. I will appeal to the experience of every member on this floor,

and ask whether he has ever heard of a solitary instance of popular outrage on this subject. No, sir: in ten presidential elections, we have given a practical refutation of the unfounded imputations that have been cast upon the republican form of Government in this respect. I will venture to assert—and I speak in the hearing of those who have been eye witnesses of the fact—that a single parliamentary election for Westminster has produced more popular excitement and violence, and outrage, than all the Presidential elections since the foundation of our Government. No American citizen has ever felt the slightest apprehension of outrage in the exercise of his elective franchise. The very humblest among us, marches to the polls with more confidence and security than even the Prime Minister of England. I have a friend: my eye who witnessed a Westminster election and it was regarded as an extraordinary instance of rashness, even in Lord Castlereagh, a Minister remarkable for his nerve, to vote for the ministerial candidate, in the state of outrageous excitement that existed. But, even that Minister, after giving his vote, was under the necessity of consulting his own personal safety by slinking, in his robes of office, precipitately from the hustings, like a felon. And yet, the turbulences of Republics, and the dangers of popular violence are the perpetual themes of declamation, applicable to this country, where every day around us looks more like the calm of death. It is idle to talk about popular violence. There is not a nation on the face of the globe, whatever may be its form of government, that is completely exempt from such an imputation.

What, sir, has been the fact, as exemplified in the occurrences of the recent election? However we may differ upon other questions connected with it, I believe few will dispute the fact, that the popular favorite, the undoubted choice of the nation, was not chosen by the House. This House disregarded the will of the people; and yet they have exhibited no indications of outrage, but have borne their disappointment in the very spirit of philosophical resignation. They have submitted, as they ought to have submitted, to the constitutional authority, with the stern dignity of freemen who understand their duties, and know how to vindicate their rights. In any other country, if a *Military Chief* had been the object of popular admiration and confidence, and defeated by the legislative body, some Cromwell or Bonaparte would have stepped forward, dissolved the contumacious assembly, and erected a throne of usurpation on its ruins.

But, sir, I not only maintain that the people are exempt from the charge of violence, but that there is a tendency to carry the feeling of indifference to public affairs to a dangerous extreme. From the peculiar structure and commercial spirit of modern society, and the facilities presented in our country, for the acquisition of wealth, the eager pursuit of gain predominates over our concern for the affairs of the Republic.

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lic. This is, perhaps, our national foible. Wealth is the object of our idolatry, and even liberty is worshipped in the form of property. Although this spirit, by stimulating industry, is unquestionably excellent in itself, yet it is to be apprehended that, in a period of peace and tranquillity, it will become too strong for patriotism, and produce the greatest of national evils—popular apathy.

We have been frequently told, that the farmer should attend to his plough, and the mechanic to his handicraft, during the canvass for the Presidency. Sir, a more dangerous doctrine could not be inculcated. If there is any spectacle, from the contemplation of which I would shrink with peculiar horror, it would be that of the great mass of the American people sunk into a profound apathy, on the subject of their highest political interests. Such a spectacle would be more portentous to the eye of intelligent patriotism, than all the monsters of the earth, and fiery signs of the heavens, to the eye of trembling superstition. If the people could be indifferent to the fate of a contest for the Presidency, they would be unworthy of freedom. If I were to perceive them sinking into this apathy, I would even apply the power of political galvanism, if such a power could be found, to rouse them from their fatal lethargy. Keep the people quiet! Peace! peace! Such are the whispers by which the people are to be lulled to sleep, in the very crisis of their highest concerns. Sir, "you make a solitude, and call it peace!" Peace? 'Tis death! Take away all interest from the people, in the election of their chief ruler, and liberty is no more. What, sir, is to be the consequence? If the people do not elect the President, some body must. There is no special Providence to decide the question. Who, then, is to make the election, and how will it operate? You throw a general paralysis over the body politic, and excite a morbid action in particular members. The general patriotic excitement of the people, in relation to the election of the President, is as essential to the health and energy of the political system, as circulation of the blood is to the health and energy of the natural body. Check that circulation, and you inevitably produce local inflammation, gangrene, and ultimately death. Make the people indifferent—destroy their legitimate influence—and you communicate a morbid violence to the efforts of those who are ever ready to assume the control of such affairs—the mercenary intriguers and interested office hunters of the country. Tell me not, sir, of popular violence? Show me a hundred political factionists—men who look to the election of a President, as the means of gratifying their high or their low ambition—and I will show you the very materials for a mob, ready for any desperate adventure connected with their common fortunes. The reason of this extraordinary excitement is obvious. It is a matter of self-interest, of personal ambition. The people can have no such motives.

They look only to the interest and glory of the country.

There was a law of Athens which subjected every citizen to punishment who refused to take sides in the political parties which divided the Republic. It was founded in the deepest wisdom. In political affairs, the vicious, the ambitious, and the interested, are always active. It is the natural tendency of virtue, confiding in the strength of its own cause, to be inactive. It hence results, that the ambitious few will inevitably acquire the ascendancy in the conduct of human affairs, if the patriotic many, the people, are not stimulated and roused to a proper activity and effort.

I come, now, Mr. Chairman, to what I regard the most important consideration connected with this branch of the amendment: the expediency of excluding this body from all agency in the election of the President.

I will, however, first draw the attention of the committee to a very striking incongruity of principle, involved in the provision to refer that election to this House. The three highest candidates, indicated by the popular vote, are referred to the House of Representatives. Upon what principle? Is it because this body has more capacity for selection than the people? Admit this to be the fact, and what follows? You call in a competent body to select a President out of three persons chosen by those whom the argument supposes to be incompetent. If the people are capable of voting for three, why not for one? Upon what metaphysical or mathematical principle is it, that the people are capable of choosing three persons, one of whom must be President, and are not capable of going another step, and choosing the one of those three who is to wield the sceptre? If the House of Representatives have any superior capacity, you do not give them a sufficient latitude of discretion to exercise it to any effectual purpose. In a word, the scheme combines the disadvantages of both modes of election, and the advantage of neither, giving to this House just sufficient latitude for all the purposes of corruption, and not enough for any good end.

The first objection that I shall urge against the participation of this House in the election of the President, is its tendency to destroy that separation of the Legislative from the Executive Department of the Government, that is indispensable to the effective responsibility of the latter. From the very nature of Executive power, its operations are unseen by the people. Acting, not like Congress, by general laws, that are regularly promulgated, the President expends money, confers offices, and regulates the distribution of armies and navies—acts silently performed, and of which the people can have no precise knowledge, that is not derived from their Representatives here. We ourselves can only see the movements of Executive power, dimly and imperfectly, through the lumbering masses of documents on our tables.

It is not to be expected that this body will be inclined to enforce a very rigorous accountability, against the President of its own creation. Instead of standing to the Executive in the relation of an independent, co-ordinate Department, it becomes the partisans of his power, and the apologist for his transgressions.

Another effect which must certainly result from the habitual interference of this House in the election of the President, is the degradation of its legislative character. Instead of statesmen, profoundly versed in the sublime art of rendering the Republic flourishing and happy, the members of this House will degenerate into mere managing politicians, trained in the little arts of intrigue. Instead of devoting ourselves to the peculiar and appropriate duties of our station, the making of laws, we shall be exclusively engrossed in making Presidents.

When the members of Congress become arrayed into cabals, designated by the names of the several candidates for the Presidency, there will be an end both of our dignity and independence. I have no occasion, sir, to be ashamed of any man whose pretensions I have sustained for the Presidency; but every principle of my nature recoils at the idea of being characterized by the name or livery of any man living. A state of things will soon occur, in which the great politicians of the country will be those who are most dexterous at making political combinations, and public men will devote themselves to the huckstering arts of gaining power, instead of studying the more dignified art of using it wisely.

It cannot be disguised, sir, that, by bringing the election of the President into this House, we expose ourselves to the influence of those arts of political courtship, which the ambitious have ever been prone to practise. To say nothing of corruption, there are few among us, strongly as we may feel intrenched behind our own dignity, who are not liable to have the sternness of our purpose relaxed by a condescending smile, or an act of Executive confidence, or—a dinner. These little arts, which, in their combined operation, constitute what is usually denominated intrigue, are the means by which cunning aspirants address themselves to the vanity and foibles of those who fall within the sphere of their fascination. The people, sir, cannot be reached by these arts; but we, their wise and virtuous Representatives, thrown into the fatal circle, fall victims to an influence of which we are not ourselves conscious. It is in vain, sir, to dissemble. We may shroud ourselves in wise looks and a dignified exterior, but we are perhaps laboring under the fatal charm of the enchantress, at the very moment we are indignantly disclaiming it.

The peculiar circumstances under which the Presidential election will generally come before the House of Representatives, constitute a very striking objection to the exercise of the power now vested in this body. The election comes here with almost a certainty that, in nine cases

out of ten, it will be decided against the will of the people. The small minorities will naturally combine against the popular favorite. They will do this upon principles as certain in their operation as gravitation. The man who is conscious that he is the choice of the people, stands firm and inflexible in the confidence of his own strength. You cannot approach him. He disdains to negotiate. He feels his title to be strong, and confidently reposes upon it. All the other candidates naturally regard him as the obstacle that stands most in the way of their hopes. United by their very feebleness, they defeat the will of the nation. For accomplishing this object the mode of voting here affords extraordinary facilities. We vote by States. The natural course of things will throw the whole power of the combination upon the small States. A single member is more easily brought into the arrangement than thirty-six. It may thus happen that less than forty members of this body will elect the President. This strong probability that the President will be chosen by a small minority of Congress, demands the most serious and solemn consideration.

Under what circumstances do you call him to the discharge of the high duties of his office? You place a sceptre in a hand which has not energy to wield it. The unavoidable consequence will be, that the whole patronage of his administration will be perverted to the purpose of sustaining and strengthening his popularity. He comes into power under circumstances that create a political necessity of action in this manner. Destitute of the confidence of the people, he must feel that his patronage is his power. This view of the subject brings me to the consideration of the great and conclusive objection to the interference of this House in the election—its tendency to corrupt the legislative body.

Corrupt Congress, and you assail liberty in the very seat of its vitality.

Sir, it is *innocence* that temptation conquers. If our first parent, pure as she came from the hand of God, was overcome by this seductive power, let us not imitate her fatal rashness, by seeking temptation, when it is in our power to avoid it. Let us not vainly confide in our own incorruptible purity. We *are* liable to be corrupted. To an ambitious man, an honorable office will appear as beautiful and fascinating as the apple of Paradise.

I admit, sir, that ambition is a passion, at once the most powerful and the most useful. Without it, human affairs would become a mere stagnant pool. It is the active principle that stimulates even the patriot to exertion, and, in its very excesses, it is the frailty of the most exalted minds. By means of this patronage the President addresses himself, in the most irresistible manner, to this, the noblest and strongest of our passions. All that the imagination can desire—honor, power, wealth, ease, are held out as the temptation. Man was

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not made to resist such allurements. It is impossible to conceive, Satan himself could not devise, a system which would more infallibly introduce corruption and death into our political Eden. *Sir, the angels fell from heaven with less temptation.*

That cannot, then, be a wise and political organization that requires us to resist temptations too strong either for men or angels.

The political truths I have advanced will be fully sustained by the authority of history. Look back, sir, into the vast and dreary solitude of past ages, and read the epitaphs which impartial history has inscribed on the tombs of fallen republics. What is the melancholy lesson they teach us? That no free Government has been overcome by force, but all by corruption. If we ever lose our liberties, which God forbid, this will be the euthanasia of the Republic. While the extent of our territory exempts us from the extinction of our liberties by popular violence, it increases the only other catastrophe to which we can be exposed—the concentration of power in the Executive Government. Sir Robert Walpole, one of the most able Ministers that English history can boast, and too fatally versed in the corrupt use of Executive patronage, expressed, as his deliberate opinion, founded upon his long ministerial experience, that, with the exception of three men, “*every politician he had ever known had his price.*” Though certainly not universally true, this remark is but too generally so in reference to all ages and countries. There is a precise accuracy in the phraseology of this sentiment, indicative of the masterly skill of him who expressed it. “Every man has his price.” That is to say, you must study the character and foibles of each man, to ascertain what it is that will make him subservient to your purpose. A man who would reject a pecuniary bribe, with indignation, would, perhaps, have no scruples to hold a negotiation for an office. Another, who would disdain to make an *express* stipulation, even for an office, might think it quite excusable to act under an *implied understanding*. And a third, who could not reconcile it to his conscience to have any understanding, either express or implied, might be seduced by accidentally hearing that a certain office was designed for him as a reward, not for his vote, but for his extraordinary merits. There is no end, sir, to the subtleties of that self-deluding casuistry, by which ambition is prone to silence the remonstrances of conscience.

There is a marked distinction between public and private corruption, that explains the reason why the one is so much more generally successful than the other, in conquering those who fall within the sphere of its influence. There is a dazzling splendor in successful ambition, that conceals the depravity by which it achieves its purpose. The man who steals a penknife is shunned as an object of abhorrence: the man who steals a sceptre is hailed

as an object of adoration. Power diffuses a deceptive gloss over the crimes of the usurper, and corruption sheds indemnity over its victims. Such are the fascinations of power, that it often wins the homage even of those whose dearest rights it has violated. But, sir, I can never regard it in any other light than as a public crime of the most atrocious hue, to acquire power by fraud and corruption. The man who rises by such means is a felon, *flagrante delicto*, and the insignia of his office are the standing monuments of his guilt.

But, sir, it is often said, “True, the politicians of England have been corrupted by patronage, but those of the United States are of more inflexible materials.” Indeed! Where did we obtain this charter of exemption from human frailty? Alas, sir, we have no such exemption. The people of the United States, for the reasons which I have explained, are superior, both in virtue and intelligence, to those of any age or country; but their statesmen are subject to the same influences that operate upon those of England, not, perhaps, in the same degree, but in a degree that is destined to be constantly increased, if not resisted by measures similar to the present. Sir, there is no country on earth where office has greater attractions, or is sought with more avidity, than in the United States. Since I have been in public life, it has been a constant source of mortification to me to witness the spirit which prevails on this subject. There are those, it seems to me, who would rather eat the “very crumbs from the trenchers” of Executive patronage, than the bread of honest independence.

In one respect, it appears to me, we cannot stand a comparison with the statesmen of England. We do not estimate the dignity of a seat on this floor as highly as an Englishman estimates a seat in Parliament. To those whose objects are the public service, and an honest fame, there can be no theatre so desirable as this floor. But what mortifying spectacles have we seen, of eager competition among members of Congress, for the most pitiful and contemptible offices in the gift of the Executive, merely for the pecuniary emolument? Offices which I do not believe a member of the English Parliament would accept at the hand of his sovereign. Nor do I see among us any of that extraordinary inflexibility in the adherence to political principles, of which the history of England furnishes some honorable examples. The elder Pitt threw his commission in the face of his sovereign, as soon as he found that his own political principles could not prevail in the Cabinet. But, do we find any instances among us, of the sacrifice of power to principle? On the contrary, do we not find political principle and consistency, openly sacrificed at the shrine of power? We see politicians of every hue and description thrown together, in the most incongruous combinations, exhibiting all the colors of the rain-



bow, without either its beauty or proportions; a sort of crazy patchwork, held together by no community either of principle or feeling, that throws into the shade Burke's celebrated description of a motley cabinet in England. Sir, it is melancholy to witness what we cannot disguise from ourselves, that a fondness for the nominal dignity and ostentatious display of office—the mere exterior trappings of honor without the substance—should be more regarded than the solid consolations of a fame, which can only be acquired by a consistent course of public service. This seems to me to be one of our peculiar weaknesses. It is rapidly growing upon us. Never was there, in any country, such rapid advances in luxury and refinement, with all their associated frailties. Hitherto, the venerable fathers of the Revolution have presided over us. Their stern and incorruptible virtues, tried and strengthened in the crucible of a long conflict for liberty, were a sufficient guarantee against the use of corruption. But the sceptre has passed into the hands of a new generation, and I fear the mantle of Revolutionary purity has not descended with it. We have certainly seen the purest days of the Republic. The sterling virtues of the Revolution are silently passing away, and the period is not distant when there will be no living monument to remind us of those glorious days of trial. If their virtues do not survive, may their memory at least be long cherished! Let it not be supposed, then, from the example of the past, that there is no danger of corruption.

But we are often told that this Government has not sufficient patronage to produce corruption; and I have even heard the opinion expressed, that there was not enough to hold the Government together. Hold the Government together! Heaven preserve the purity of that Government that is to be held together by patronage! But it is a great mistake to estimate the patronage of this Government so lightly. It is even now great, and it is rapidly increasing. We are not the mere beings of a day, but must look forward at least to a few generations of our posterity. What, sir, is the prospect? I am almost afraid to contemplate the spectacle of our growth. In little more than half a century from this day—a period which many, I trust, of those who hear me, will live to witness—the population of these United States will have swelled to the mighty number of forty millions of human souls! With twice the present population of England, and the vast multiplication of offices, resulting from the increasing wants and growing interests of that population, what must be the extent of Executive patronage, and what the virtue of our successors here to encounter, and yet resist it? We are admonished by the experience of nations, that if we would resist corruption effectually, it must be done in the incipient stages of degeneracy. No nation ever has been seen to retrace her steps after

having fairly and fully commenced the downward march. The tide of corruption never flows backwards. If once the fatal poison is infused into a vital part of the system, nothing is left to us but to await the issue with melancholy resignation.

With such perfect abhorrence do I look upon the interference of this House in the election of the President, that, if the small States pertinaciously adhere to the present system, and prevent the amendment of the constitution in time for the next election, I will myself, should no other person do it, propose a convention of popular delegates from the whole Union, to nominate a President; and I would stand pledged to sustain the nomination. If you will not amend the constitution, the people will rise above it. It is idle to think of preventing the people of this country from exercising the most legitimate and important of their sovereign rights, by paper restrictions. You had as well, sir, attempt to tie down a lion with a cobweb. Where, then, will be the small States, and what the value of a contingent equality, when the contingency will never occur? As a friend to the just rights of the small States, I beseech gentlemen not to persevere in the attempt to retain an unjust power, at the hazard of those combinations among the large States, that will inevitably result in the oppression of their more feeble competitors.

But, have the *people* of the small States any interest in the possession of this contested equality of power? Though it may increase the power of their politicians, and enable them to secure a large dividend of Executive patronage, yet what do the people gain, either in power or happiness? Has a small State, merely as a small State, any right or interest, which would be safer in the hands of a President chosen by Congress, than they would be in the hands of a President chosen by the people?

But, sir, is not this a delusive mockery even as to the question of power? Do the States really exercise it in point of fact? Consulting the actual operations of the system, we find that the Representatives of the small States have as often voted against the will of those States as in conformity with it. Will the small States contend, then, for the worse than unprofitable right of being *misrepresented* on the great subject of the Presidential election? Will they persist in a system that serves only to expose their Representatives to extraordinary temptation, throwing them into a scene of action, in which, if they had the virtue of a Cato, they could not avoid suspicion? But the strong argument in favor of the proposed amendment, in reference to this question of relative power, is the equitable compromise which it involves between the large and the small States. It is that very spirit of mutual concession in which our Government originated. By the district system, the large States give up the power of forming combinations to overpower the small; and by removing the

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eventual election from this House, the small States give up their contingent equality. What most forcibly recommends this compromise, is the consideration that the powers mutually surrendered by the large and the small States, are dangerous to the purity of the Republic. It is an offering which patriotism requires us to make at the shrine of liberty. Is it possible that we can hesitate?

I do sincerely believe that we have reached a crisis in our great political experiment, when the fate of that experiment will depend upon the wisdom with which we act. Never was there a human assembly invoked by higher considerations to act with disinterested magnanimity. The destiny, not only of the rising millions that are to come after us here, but that of the whole civilized world, hangs trembling on the issue of our deliberations. No nation on earth has ever exerted so extensive an influence on human affairs, as this will certainly exercise, if we preserve our glorious system of Government in its purity. The liberty of this country is a sacred depository—a vestal fire, which Providence has committed to us for the general benefit of mankind. It is the world's last hope. Extinguish it, and the earth will be covered with eternal darkness. "But once put out that light, I know not where is that Promethean heat, that can that light relumine."

MONDAY, February 20.

*Amendment of the Constitution.*

MR. BUCHANAN offered the following:

*Resolved*, That the constitution should be so amended, as to re-establish the third clause of the first section of the second article of the original constitution; except that portion thereof which confers the power of electing the President upon the House of Representatives.

*Resolved*, That the constitution should be so amended, that, in case no election shall be made by the Electors, then the States shall choose the President, from the two highest upon the list, in such manner as the Legislatures thereof may direct; each State having one vote.

MR. BUCHANAN said, it was far from his intention to enter into any detailed explanation, at this time, of the amendment which he had proposed. For the purpose, however, of directing the attention of the House to them, he would merely observe, that the object of the first resolution was, to restore the *original* provision of the constitution, in regard to the election of President and Vice President, to the time when that election would devolve upon the House of Representatives.

The second resolution proposes, that, in that event, the sovereign States of this Union shall choose the President from the two highest on the list. When no election is made by the electors, it simply confers upon the States themselves the power which is now exercised by their Representatives. It proposes that, in

making the choice, the States, and not their Representatives in this House, shall each give one vote, in the manner which their respective Legislatures may prescribe.

MR. B. said he did not propose the last amendment, because he thought it the best possible method of taking the election from the House of Representatives; but because, after much reflection, he believed it was the only one practicable. That consummation was devoutly to be wished by all, and by none more than the Representatives themselves; and he felt persuaded that no amendment for that purpose will ever prevail, which does not leave the balance of power among the States, as it at present exists.

MR. B. said he did not intend to interfere with the debate now progressing. In case the House should appoint a Select Committee, he wished merely that these propositions may be placed in such a situation that they may be referred to that committee.

These resolutions were referred to a Committee of the Whole.

TUESDAY, February 21.

*Amendment of the Constitution.*

MR. POWELL offered the following resolution:

*Resolved*, That the constitution ought to be so amended, that, in the event of the election of the President of the United States devolving on the House of Representatives, as to provide that no member of the House who shall vote upon such election, shall be capable of receiving an appointment to any office under the Government of the United States, where the power of nomination is in the President, for the term of three years thereafter, except when the nation may be involved in war, in which event, the foregoing disqualification shall not operate to prevent the appointment, or acceptance by any such member, of a commission in the army or navy of the United States.

MR. POWELL, upon offering his amendment, observed, that it was not his intention, at this time, to discuss the merits of the proposition he had offered, or any of the various propositions now before the committee, and under discussion; and, unless his present intentions underwent material alteration, he should not, at any future period, intrude himself upon the attention of the committee upon this subject. MR. P. observed, that it was due to himself and his feelings, in relation to the members of the last Congress, to disclaim any, the most remote, idea that the House, or any of its members, in the exercise of their high constitutional duty of electing a President, at their last session, were influenced by any hope of office, or by any other unworthy motive. He had too high a sense of the character of the members of the last Congress, to believe such an event possible. It was in reference to the future, and the fears expressed by gentlemen, that he had offered the resolution. The House would discover that the resolution would only

be adopted in the event of the various plans already suggested, or which might be suggested, to take the ultimate election from the House, being rejected by the House. While we were distributing constitutional power, taking from one, and giving to another, it might be well for us to show our willingness to submit to this self-denying provision, and place the members of this House beyond suspicion.

The resolution was then referred to a Committee of the Whole.

WEDNESDAY, March 1.

*Penitentiary for the District.*

On motion of Mr. THOMSON, of Pennsylvania, the House then went into Committee of the Whole, Mr. TOMLINSON in the chair, on the bill to provide for erecting a penitentiary in the District of Columbia, to reform the penal law of said District, and for other purposes.

Mr. THOMSON said, the bill now submitted to the consideration of the committee, is one embracing principles of considerable consequence. He would desire it to be read through, before he proceeded to make any remarks on the subject, but it was very long, and would, of course, occupy considerable time. He thought a statement of its general scope and design would be sufficient to enable the committee to understand the arguments he had to offer. It proposes to establish, in this District, a Penitentiary, and so to alter the criminal law of the District, that confinement to hard labor shall be inflicted on most crimes, instead of the irrational punishments now in use.

When, said Mr. T., this subject was, by a resolution of the House, referred to the Committee on the District, it became their duty to inquire into the provisions of the present code of criminal law, administered in the District; the condition of the jails; and to provide a remedy for the evils they found prevalent in both. I will now, as briefly as I can, exhibit to the committee the facts on these subjects, which have come to our knowledge, and the reasons which have induced us to propose the remedy for the evils of the present system which this bill provides.

In the year 1791-'2, the District of Columbia was ceded to the United States by the States of Maryland and Virginia. By an act of Congress on the subject, the laws of Maryland, as they then stood, were adopted for the government of that part of the District ceded by that State, and the laws of Virginia for the government of that part of the District south of the Potomac, until they should be altered by act of Congress. As far as relates to criminal matters, the laws of the District have not been since altered.

The States of Virginia and Maryland have since changed their whole system of criminal jurisprudence. They have discarded the cruel system of hanging, whipping, and disfiguring malefactors, and substituted in their stead, the

more mild and efficacious one of confinement to hard labor in a penitentiary. But these improvements do not extend to this District.

It is a maxim, in legislating on subjects connected with criminal law, that the prevention of crime is the only legitimate object of punishment. That system which secures to society the greatest amount of prevention, is the best, and ought to be adopted; and that which experience has proved is defective, in this respect, ought at once to be abolished. If we look into the practical operation of the present system of criminal law, in this District, we will find it wholly inadequate to produce the great beneficial results to society, which ought to flow from the administration of the penal justice of a country.

On the south side of the river there are above thirty crimes punished with the dreadful penalty of death; and on this side of the river, there are above fourteen for which the same punishment is provided. It is unnecessary for me to recite the whole of these bloody enactments. It will be sufficient to mention two or three, to illustrate the spirit of the whole code. Feloniously breaking and entering a store or warehouse, by day or by night, and stealing there to the amount of four dollars; breaking out of prison, if the prisoner were confined under the charge of a capital felony, whether he were guilty of that felony or not; a slave, preparing or administering any medicine with ill intent, or attended with any bad consequences; maliciously burning *any* house, whether it be a mansion house, or whatever may be its use. On this side of the river, breaking and entering a warehouse, storehouse, or tobacco-house, and there stealing to the value of five shillings, is punished with death. Thus, on one side of the river, the life of a man is valued at four dollars, while on the other, the law fixes its price at but five shillings. But the most horrid of all the bloody denunciations of the law here, is, the judgment which it requires to be pronounced on a slave, convicted of petit treason, murder, or arson. It requires that he should be hanged, his head cut off, and his body divided into quarters, and his head and quarters set up in the most public places of the District. Future generations will scarcely believe that in this enlightened age, after the District had been under the exclusive government of the Congress of the United States for thirty-five years, its laws would tolerate such a dreadful spectacle. What will they say when they are informed that the law not only tolerates, but commands it? How should we feel reproved for our supineness, in legislating for this District, if, unfortunately, a poor slave should be convicted of murder or arson, and we should be compelled to witness the execution of the dreadful penalty, by seeing the bleeding and mangled quarters of the unhappy malefactor exposed on the public avenues of this city?

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It is certainly unnecessary for me to prove that this system is wholly inconsistent with the genius and spirit of the present age. Its operation and effect proves this more forcibly than any argument I can use. The great first principle of our system of Government is, that the law is the expression of the *public will*. This is not only true in theory, but it is true in practice. When any statute falls under the general displeasure of the people—when the popular will is decidedly against it; if it be one which must be executed through the medium of courts of justice, and more especially if it be a penal one, it soon loses its force, and becomes a dead letter. This is the case with these severe enactments in this District. The unwillingness of the witnesses and prosecutor, the humanity of the jury, the lenity of the judge, and the clemency of the Executive, interpose themselves, aided by the irresistible force of public opinion, between the criminal and the execution of the sentence of the law, so that in all those cases falling within the range of the penalty of death, the offender is never punished, and society is left wholly without protection.

The laws now in force contain penalties wholly disproportioned in severity to the enormity of the offences against which they are enacted. It is true that no human ingenuity can devise a system of such perfection, in this respect, that every offender shall receive the precise amount of punishment due to his guilt. Human reason is imperfect, and human laws must necessarily be general in their provisions, and partake of the imperfections of those who framed them. But, because we cannot do every thing, we are not to conclude that, therefore, we ought to fold our hands, and not attempt to do any thing. If we are denied the power of making a system theoretical, beautiful, and perfect in symmetry, this furnishes no good reason why we should wholly disregard all proportion, and inflict the highest penalties upon the lowest grades of guilt. How atrociously unjust it must appear in the eyes of an enlightened and civilized people, to see the dreadful penalty of death inflicted on an offender whose only offence is, that he has escaped from prison, where he was detained on the charge of a crime punishable with death, and this, whether he was guilty of the crime for which he was detained, or not—a crime, to the perpetration of which there is the highest possible temptation. How does the heart of humanity revolt at the thought of hanging a man, because he has stolen to the value of five shillings! What can justify the barbarity of consigning to the gallows and the grave, the unhappy slave who administers medicine which has some bad effect? The injustice of these terrible judgments of the law is too glaring to require the least illustration.

Death, as was said by one of the ancients, "of all dreadful things, is the most dreadful." It ought, therefore, never to be inflicted, ex-

cept for the very highest degree of guilt. There are few systems of law which set a high enough value on human life. Legislatures frequently forget the magnitude of the subject, when they are called upon to deliberate upon the life and death of their fellow-citizens. When the question is proposed whether we will consign a rational being to the untried destinies of a future world, to take up his abode, perhaps, in that house of pain, from which, throughout the never-ending flight of future years, "there is no escape," we cannot make up our opinion with too much caution.

But this is not the only part of this system which is objectionable. It is, throughout, a system of impotent cruelty. Its only instruments of punishment are, the gibbet, the whip, and imprisonment without labor. Its only end seems to be the infliction of corporal pain; and the only effect it produces is the hardening and confirming in crime, those upon whom its sentences are executed. The only punishment which the law presents in the District, besides that of death, is whipping, imprisonment without labor, and fines.

When crimes are committed, it is the duty of an enlightened Government to examine its laws, and the structure of society; to look to the peculiar genius of the age, and carefully to inquire into the habits, temper, and character, of the offenders, and the temptations which may have given occasion to their crimes; that it may ascertain what punishments will be best calculated to reform the habits of offenders, and give the highest security to society. In ancient times of barbarism, Governments, instead of calmly making this investigation, fell upon their criminal subjects, not like a father, intent upon reforming their children, but like infuriate maniacs, resolved to inflict upon them the highest possible corporal suffering. And I regret that too much of this spirit is still to be found in the world. Reasoning from the nature of things, one would be led to the conclusion that whipping and other corporal punishments could not have a tendency to reform the character, improve the morals, heighten the civilization, soften the temper, and correct the habits of those on whom they are inflicted. But experience has proved this truth with tenfold more power than abstract reasoning.

To bring the results of experience to bear upon this point, let us compare the effects produced by the system in this District, with those produced by the Penitentiary system in those States where it has been applied. An instance occurred lately of an offender who was in prison at the commencement of the session of the court, for the crime of larceny, who was tried, whipped, and discharged, and for two successive similar offences was twice afterwards arrested in succession, tried, whipped, and discharged, before it rose. Another person was, in the space of four years, convicted for larceny seven times. The population of the District is about 84,000. The convictions for

the last four years, of crimes which usually are, and ought to be, punished by confinement to hard labor, were at the average rate of sixty per year; that is, in the ratio of one to about 560 of the population. In the State of Maine, last year, the convictions of offences punished in the Penitentiary, was in the proportion of one to 6,000 of the population. In the State of New Hampshire, the prisoners in the State prison, at the end of last year, were 67. If we suppose that one-half of these were received during the year, which is a large number, and, no doubt, above the truth, we will find, that, even on this computation, the convictions were, there, during the last year, in the proportion of 1 to about 7,400 of the population. In Connecticut, the convictions were, last year, in the proportion of 1 to 7,000 of the population. In Vermont, the convictions were as 1 to 8,000. In the State of New York, from the year 1797 till 1814, the convictions average, annually, at the ratio of 1 to about 5,000 of the inhabitants. In Pennsylvania, from 1794 to 1816, the average is, annually, in the proportion of 1 to about 6,200 of the population. During the latter part of this period, in these two States, their Penitentiaries had become so crowded, as, in a great measure, to destroy their moral effect. Yet they were nine times as efficacious to prevent crimes, as the punishments inflicted in this District. In Massachusetts, the convictions average, from 1806 to 1816, annually, at the ratio of 1 to about 8,000 of the population. And in Virginia, where the system of law is mild, and the Penitentiary has been conducted on principles well calculated to give it moral effect, the convictions were, last year, in the proportion of 1 to 10,000 of the population.

This statement of facts exhibits, with a thousand times more force and clearness, the effects of the system in this District, than any abstract reasoning possibly could. It is true that the population of the District is nearly all a city population. It must, therefore, be expected that crimes will be more numerous here than in agricultural States, in proportion to the number of inhabitants. But it must also be considered that the States I have mentioned, have large commercial cities in them. So that, making every allowance that could be asked for the character of the population of the District, we will find that the penal laws of the States I have mentioned, are, upon an average, more than seven times as effectual to secure society against crimes, as the system of hanging and whipping which prevails here. But I need not refer to statistical calculations to prove that the system of penal law, which governs the District, is one of the worst in the United States, or perhaps anywhere else to be found. We have almost every day occasion to see its total inefficacy, and some of us are every session taught, by personal experience, to know, that the law furnishes but slight protection to the rights of property.

When Congress see this District, over which

they hold the direct dominion and absolute sovereignty, suffering the greatest evils that can be inflicted on a community, for want of a code of criminal laws, suited to the spirit of the age, and calculated to improve public morals: when they see crimes multiply, and criminals go unpunished: when they see property insecure, and that the laws, which ought to stand as an impenetrable wall of adamant round the civil rights of every individual, have lost their protecting powers: when they see that, instead of improving the morals of society, its condensed energies are poured out upon it, hardening the hearts and rendering obdurate in guilt, those on whom its penalties are inflicted, and disgusting and corrupting the rest of mankind—they must feel that a powerful appeal is made to their paternal justice, and that the authoritative voice of duty enjoins it upon us to give a system of an opposite tendency to this subject people.

I have thus endeavored, as briefly as possible, to state the facts exhibiting the provisions and moral tendency of the present system of criminal law of this District. These facts, without any argument from me, prove, in the most conclusive manner, that there is nothing in it which suits the present condition of mankind. The cruelty of its penalties has roused against it public opinion, and, of course, they are but seldom executed. This argument alone, if there were no other, furnishes sufficient reason to abolish it.

Mr. VERPLANCK followed Mr. THOMSON. He adverted to the experience of New York, in relation to the Penitentiary system, respecting which there was a division of opinion, but of which he declared himself the decided friend. He thought, however, that to be successful, it required to be conducted in a particular manner, which could be learned only by a careful reference to the experiments which had been made. He then proceeded to point out some particulars in which the bill stood in need of revision.

Mr. THOMSON stated, that the committee who had reported the bill were aware it might be improved, and had prepared some amendments which they should bring forward in due time.

Mr. VERPLANCK resumed, and, having stated other points in which the bill seemed defective, said he should wait till the committee suggested, more fully, their own views, before he made any motion to amend. He thought, however, it would be better to appoint three Commissioners to prepare and report a system of Penitentiary law, and of Prison discipline, together with a plan for the construction of the Penitentiary building itself.

Mr. POWELL replied to Mr. V., combating the objections he had stated, and deprecating further delay in the application of remedy to a crying evil.

Mr. BRENT thought it would be better to recommit the bill, and let the committee ingraft into it such improvements as they might think proper.

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The bill was then about to be read by sections: when

Mr. LIVINGSTON, after paying a deserved tribute to the efforts of the gentleman who had presented the subject to the Committee of the Whole, moved that the committee rise.

The motion prevailed and the committee rose accordingly, and obtained leave to sit again.

The House adjourned.

TUESDAY, March 7.

*Amendment of the Constitution.*

On motion of Mr. McDUFFIE, the House then resolved itself into a Committee of the Whole on the state of the Union, to consider the resolutions offered by him for amending the constitution.

Mr. CAMERLUNG said, the character of his State had made so prominent a figure in the debate, that it could not be necessary for him to make any apology for addressing the committee. He had supposed the peculiar circumstances of the times would have admonished gentlemen of the propriety, nay, necessity, of exercising mutual indulgence and forbearance. He regretted, however, to perceive, from the course of this debate, that while we were generously disposed to overlook the errors of the public men in power, and the conduct of all other politicians, during the late election, we were never to terminate our animadversions on that class of politicians who alone could be proudly denominated "no man's men." The State of New York had accordingly been selected as the theatre of the war; and that portion which had been left unravaged by the gentleman from South Carolina, (Mr. McDUFFIE,) had been laid desolate by his colleague, (Mr. STORRS.) He was little disposed to engage in a debate of this character; but, in such a cause, he should be unworthy of his station, were he not ready to break a lance with either or both the gentlemen. The remarks he should submit, would be applicable to the crisis and the question; for both had grown out of the late election by the House. In submitting them, he should not affect a delicacy he did not feel, nor preach a political morality he did not practise. He should treat it as every question should be treated, involving public men and public measures. And, while he should exercise due decorum, he should not forget that the question was one of the most important ever submitted to the attention of Congress. His impressions on the subject were strong—perhaps stronger from the circumstance of his having been a member, he might also say a spectator, during the recent election by the House. He might be mistaken—he trusted he was—but he approached the question under a sincere conviction, that, unless the electoral office be taken hence, the time was not remote when frequent elections here would produce a revolution in the practical operation of this Government, destructive of every thing like political principle and constitutional law, and, in

the end, fatal to that sound public opinion upon which the Government was founded.

Before he paid his respects to his colleague, (whom he was happy now to have in his eye,) he would, as first in order, turn his attention to the gentleman from South Carolina, (Mr. McDUFFIE.) It was probable that that gentleman and himself had before them a long journey to perform together; but he was apprehensive they would make very unpleasant companions. We shall, most undoubtedly, said Mr. C., unless he learns to treat my old friends with more respect; for, unlike some others, I never desert an old friend. At the very outset, the gentleman had made an attack upon a venerated and respected friend—he was about to say, now no more—King Caucus. Now that the election was over, we could take a more sober view of the past. This was a spectacle raised during that election, by certain men, for certain purposes. A union was formed: each of the parties to it had his distinct object, ultimately, in view: they were united in but one, the overthrow of King Caucus. We know the result—a result little to the satisfaction of most of the parties to the compact. He had expected from the gentleman from South Carolina a sympathy for King Caucus—a sympathy arising out of similarity of condition. He never reflected on the fate of poor King Caucus, without being reminded of the brief and splendid career of an illustrious exile. He, too, was born a republican, among the wild mountains of Corsica: he, too, played an unceremonious game with Kings and Emperors. He was, unhappily, made a monarch: he became too powerful—excited the jealousy of his neighbors, and alarmed some of his friends. An alliance was formed to overthrow him: each of the parties had his own ulterior scheme: he was conquered: an ancient family was restored—very little to the satisfaction of any, but one, of the members of the alliance. Soon after the restoration here, another great man appeared, bearing a strong family likeness to our late monarch: but the name of Caucus having become somewhat unpopular, his sponsor gave him another name—they called him "Convention"—which, to drop our diadem, means a congregation of deputies, who meet, intrigue a little, quarrel a little, and, at last, agree upon a candidate not much to the satisfaction of some. And yet, in the view of the gentleman from South Carolina, there is a wide distinction: a Caucus is something corrupt, something loathsome—an incubus; while a Convention is a harmless popular favorite! He would not argue this question with the gentleman from South Carolina: he would leave the distinction to his acute and discriminating powers, referring him to the laconic and facetious remark of the celebrated "Doctor Ollapod, of the gilt Galen's Head, Cornet of Horse," to Miss Lucretia MacTab—"Rhubarb is rhubarb, madam, call it what you will."

If the gentleman from South Carolina, or his honorable colleague—who also seemed to think

Convention "less offensive"—believed that the understandings of the American people were to be duped by such distinctions—where no difference substantially existed—they underrated their intelligence. These were the mere forms of party, which must exist in some shape or other, wherever parties exist—wherever the people enjoy the privileges of an election.

But the gentleman from South Carolina deprecates party. And does that gentleman expect to defeat the unwise measures of an Administration, sustained by the patronage of all the Departments and the Executive—backed, too, by an overflowing Treasury—without the agency of party? If such be his plan—if the opposition is to be regulated by the rules of the gentleman from South Carolina, he was not ready to engage in it. He was not prepared to embark in a cause, merely from the patriotic motive, in the language of Mr. Burke, of falling, "one by one, an unpitied sacrifice in a contemptible struggle." No party! What language is this? Are we not in the midst of party? What mean these movements which we have witnessed in our House, since the commencement of the present session? Is there not an Executive party here? The weird sisters appeared not more promptly, at the waving of the magic wand, than a phalanx rises here at the call of the Executive. Nay, we have seen them rise, even when a measure was only *supposed* to be of an Executive character. No party! This is no new language—it has often been held: but no one familiar with the political history of free countries, and practically acquainted with the politics of this country, ever could suffer his judgment to be deceived by it. Party is indispensable to every Administration—it is essential to the existence of our institutions; and if it be an evil, it is one we must endure, for the preservation of our civil liberty. It never yet injured any free country—the power of party was never abused here but once: the evil was instantly corrected by the people—the political revolution of 1800 was the consequence. Our public affairs were never better administered than during the Administration that followed—when measures were proposed and advocated by the majority, under the vigilance and correction of a minority. It is idle to talk of the violence of party spirit: the conflict of parties is a noble conflict—of mind to mind, genius to genius. It is to such periods of high excitement—to these wars of intellect, that we are almost indebted for all that is great and valuable in political science. In vindicating party, it was hardly necessary for him to say that he entertained no cold, narrow, or vindictive feelings: on the other hand, some of his warmest and best friends, socially and politically, were of the old federal school; but there was not a man among them who had ever deserted his party—not one of those who came like spies into our camp only to betray us. No: every man of them has been faithful to his cause. There is a sympathy among men

of principle—between those who appreciate fidelity—that principle of fidelity, without which all free political communities would be dissolved.

While opposing the present Administration, it should have his support of every measure, which, in his judgment, would advance the public interest: for the rest, the gentlemen on the other side, should have an open, an honorable war. He would be candid with gentlemen: he could not judge every Administration by its measures. In the language of the great man whom he had just quoted, and who, of all other men, was from experience, most able to instruct as he would say, "he never knew men reformed by power," neither would he make the experiment to discover whether "their measures would prove better than their morals." He could not, if he wished, extend his confidence to the gentlemen in power—it was something not to be controlled. He would say to them, with Lord Chatham, "Confidence is a plant of slow growth"—and, moreover, differing from most plants of slow growth, it is of a delicate nature—once blighted it seldom revives. Penitence may restore men to the bosom of private friendship; but in public affairs, it seldom happens. The pulsations of a nation are slow: the career of ambition brief. An Administration enjoying his support must have the light of a nation's confidence, shining clearly and brightly around it: its foundation must rest upon something more solid than a compromise of opinion—something less volcanic than an adjustment of ancient but unextinguished animosities.

The gentleman from South Carolina had referred to a Boston mob, and a New York rabble. The gentleman must pardon him for saying that he was as unhappy in this illustration, as he was unsound in the principle of political philosophy he meant to establish. A Boston mob, he thought, had figured somewhat too gloriously in our Revolutionary history—it had shared too illustriously in those struggles which terminated in our independence, to be selected as the victim of a sarcasm even by comparison, or to illustrate a principle of philosophy. He would say something of its history in another war: but here he must touch lightly—he was treading on delicate ground: he must, however, in justice, be permitted to express a sincere regret, that public affairs, in our late war, had not been, in that region of country, less under the direction of some who were there in power and more under the guidance of a patriotic Boston mob. What had been performed by a New York rabble, he should refer to in replying to his colleague. Were he disposed to retaliate on the gentleman from South Carolina, he had an admirable weapon at hand—he might sketch a scene at Edgefield Court-House—a portrait of a riot at *Old Edgefield*. If the gentleman wished to see the portrait which might be drawn of *Old Edgefield*, he would refer him to a pamphlet by a celebrated itinerant, the late vicar of the parish of Mount Vernon. He should not judge that gentleman's constituents

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by any such standard. He would never condemn the respectable yeomanry of South Carolina, for the licentiousness of a few, nor the occasional aberration of the many: nor would he ever anticipate a revolution in this country, from a riot at Edgefield, or New York, or Boston. The gentleman from South Carolina need not seek, amidst the riots and revolutions of Rome, for the causes of our dissolution. He should look to the history of modern times, and to the character of nations as they are now. Were he in the Turkish empire, he might then seek for instruction in Roman story. What Rome was, Constantinople is. The citizen-soldier of the Roman empire, is the Turkish janissary of our times; and although under a different form of government, the revolutions in the two cities are essentially the same. If the gentleman from South Carolina would seek for the causes of a dissolution of our Confederacy, he need not travel far: they are at hand: they are within these walls; this is destined to become the scene of violence—the theatre of all our revolutions. When this House becomes corrupt, our Union is dissolved—the heart must perish, ere the limbs fall off.

THURSDAY, March 9.

*Amendment of the Constitution.*

On motion of Mr. McDUFFIE, the House again went into Committee of the Whole, on the state of the Union, on the resolutions offered by him for amending the constitution.

Mr. EVERETT addressed the committee as follows:

Mr. CHAIRMAN: I rise to address the committee, in a state of indisposition under which I ought, in prudence, to be at home, rather than on this floor. I am opposed to the resolutions of the gentleman from South Carolina, (Mr. McDUFFIE.) It is, with me, a matter of serious question, whether the alterations in the constitution, for which they provide, are not, in their spirit and tendency, unconstitutional. I am not aware that this topic has been discussed, or that the limit, to which the power of amending goes, has been duly settled by the people of America. Meantime, I am strongly disposed to think, that the Parliamentary license of amendment, by which we make what changes we will, in propositions that are before us, has no application to the Constitution of the United States. In the ordinary business of legislation, and for the sake of facilitating our proceedings, it is permitted, under the name of amendment, totally to change the nature of a proposition; to convert it from positive to negative, and the reverse; and this, with good reason: for, the entire proposition and the whole subject matter of it, being within the control of the House, it is a mere matter of convenience, in point of order, whether we change one proposition by way of amendment, or discard it, and bring in another. But, our relation to the Constitution of the United States is very different; and no such

latitude of amendment can be indulged with respect to that instrument.

The justice of this distinction may, I think, be illustrated by a simple supposition, that should go to vary the relation in which we stand, even to ordinary matters of legislation. In some Representative Governments, that of France, for instance, all bills are introduced by the officers of the Crown, who are bound by their duty and oath of office to support them, if required. Suppose something like this existed in our Government; and that you, sir, as Chairman of the Committee of Ways and Means, were under an obligation of this kind, to support the leading appropriation bills of the year. Should you esteem it to be consistent with that obligation, to introduce, under the name of amendments, essential changes in the provisions of those bills? Would not such a step on your part be a direct breach of official confidence? Now, with regard to the Constitution of the United States, our whole legislative action with respect to it, whether in the way of administering, interpreting, or amending, must be governed by the obligation to support it which is imperative on every citizen, and particularly so on us. It is about three months since, in addition to the obligation which we share with every citizen of the country, we were laid under the specific and solemn obligation of an oath, to support the Constitution of the United States. The gentleman from South Carolina comes into the House; tells us that, in its most important functions, the Constitution of the United States has wholly failed; and proposes alterations in it, so essential, so vital, as will, if adopted, (in the judgment of the honorable gentleman,) give perpetuity to our institutions; if rejected, leave us exposed, within fifty years, to revolution and ruin. I ask, sir, whether the latitude of amendment can be strained so far, in reference to a frame of Government, which is of the nature of a compact between the parties, and which we are under the strongest general and specific obligations to defend? I think, sir, it cannot.

I am aware, that these remarks may seem somewhat paradoxical; and that, as far as they claim to present an argument, the answer is ready, viz: that the article of the constitution, which provides for its own amendment, is an integral part of the instrument; that, therefore, the obligation to support it and adhere to it, as a compact, is modified by this amending power; in other words, that we do, while amending, support it. We do while *amending* support it and adhere to it; but the distinction still recurs, that to amend is one thing, essentially to change another. To amend is to make changes consistent with the leading provisions of the constitution, and by means of which those leading provisions will go into happier operation. Can this be the same thing as to change, what we call, while we propose the change, those essential provisions themselves?

Let us look to the article of the constitution, which ascertains the right and power of amend-



ment. The fifth article of the constitution fixes the mode in which amendments shall be made, with this proviso, that, before the year 1808, no amendment shall be made, that shall reach the first and fourth clauses of the ninth section of the first article, and also that no State shall, without its consent, be deprived of its equal suffrage in the Senate. These are the only express limitations of the amending power. Now, one of two propositions must be maintained: either that these two *express* limitations are the *only* limitations of the amending power, or, that there is a prior limitation of the amending power, growing out of the nature of the constitution as a compact. Unless we admit the latter proposition, there is nothing to prevent a combination of two-thirds of Congress, in the first instance, and three-quarters of the States in the second, from depriving the remainder of the States of any advantage they possess in those provisions of the constitution, which guarantee the Federal equality, which was not to be touched without unanimous consent. Nay, sir, without this prior limitation of the amending power, there is nothing to prevent the only express limitation which now exists from being itself removed by way of amendment, thus leaving the fifth article without conditions. The necessity of admitting this prior limitation is peculiarly apparent, in the case of all proposed alterations, which *unequally* affect the various portions of the country.

I am, therefore, strongly inclined to think, that the principle of this implied limitation must always be consulted; that this must show us in each case how far our alterations may go, and that it does dictate to us that our amendments must be confined to those changes which are necessary, not to alter the essential provisions of the constitution, but to carry them into more perfect and happier operation. In fact, I can conceive no maxim in politics more dangerous or more false, than that a written compact of Government can be construed to look forward to its own worthlessness; that it can be supposed to be within the competence of a body of political functionaries, assembled under a written constitution, to take a single step on the assumption that the constitution, which is their life and soul, without which they have no political existence, has failed in the exercise of its most important functions. The proposition carries political suicide in its very terms.

If, in the changing aspect of things, the time shall ever come, which God grant may never be, when the parties to this compact shall feel—for it will be a thing to be felt, not to be reasoned upon—when they shall feel that this framework of Government has wholly failed of attaining its essential objects, it will be for the unhappy generation who make that discovery, standing as they will do, by virtue of the discovery, in a state of nature toward each other, to reorganize the elements of the political body, as they may or as they can; in whatever way they do it, it will not be that of constitutional amendment,

depend upon it. In the mean time, I am in the fullest persuasion, I am under the most perfect conviction, that every proposed alteration, which avowedly goes to change the essential features of this instrument, is neither more nor less than unconstitutional; we have, accordingly, no right even to consider it, which is all we can do at best—we have no right to propose it; it is not within our competence.

Having expressed myself thus strongly on this point, and less strongly I could not have expressed myself, and have done justice to my convictions, I am bound to say, that if there is any in this House of the class of politicians to which the honorable mover of the resolution alluded, those who feel an indiscriminate reverence for the perfect and imperfect features of the constitution, I am not one. In setting my face against all alterations of the essential provisions of this frame of Government, I am in no degree influenced by a belief or feeling that these most essential provisions, it is a perfect system. Far otherwise: perfect! how can it be? Was it not a compromise between parties equally balanced? Was it not a compromise between parties on the point of breaking up the convention, and going home? For, the scene which the gentleman from New York (Mr. STORRS) thought was yet to be disclosed, was told, near forty years ago, by Luther Martin and Governor Randolph. Yes, sir; they were at the point of breaking up the convention, when the most essential feature of the constitution—the adjustment of the Federal and Popular principles in the General Government, was settled, by a compromise between the two parties in this excited state. Could we expect, under these circumstances, to find it perfect? No, sir. I say, boldly—if it requires boldness to make the avowal—that I regard it, in this most essential feature, an imperfect system of Government. I am astonished that the great States ever, for a moment, listened to it; (my own State was great at that time; it is now small, and I hope this circumstance will procure me the credit of sincerity in these sentiments,) that they ever agreed to give the small States an equality of power. I am sure they would never consent to it again. If the work were to be done to-morrow, they would not listen to the proposition a moment. And what then? Grant that the system is not perfect, shall I then support it and maintain it? Sir, it is one thing to hold that the constitution is perfect, so perfect as to be beyond amendment—I did not suppose that anybody held that opinion: I do not now suppose that anybody views it in that light, not even the gentleman from Virginia (Mr. AROBERG,) who regards it as the work of inspiration. Even he is in favor of one of these amendments, and acquiesces in the other; which, unless he supposes the amendments also inspired, would be patching up inspiration with mere mortal wisdom—sir, it is one thing to think the constitution perfect, and another to think that, whether perfect or imperfect, it is

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a compact which it is our duty, nay, which it is our interest, to support: and it is still another thing to believe, that, even in those points which are fully and clearly within the reach of the amending power, properly construed, and fairly applied, it is better, far better, to bear with almost any political evil, than to fly to the constitution with amendments. In my judgment, the very worst possible remedy for any evil, not positively intolerable, in this country, is an amendment of the constitution. It is an acknowledged maxim of political prudence, that frequent changes of the laws, even in matters of ordinary legislation, are pernicious. It is the opinion of every sound statesman, that it is far better to bear with any evil that is not absolutely intolerable, than to render the great interests of the country insecure, by indecisive and fluctuating legislation. But, the constitution—the constitution—the only thing permanent which we have: the only thing which the people of the United States have taken out of the grasp of this daily changeable legislation: the thing which is to stand us instead of all the perpetuities of the old world, ecclesiastical, political, social, and personal. Sir, I do not think it perfect; but it is good enough for me. I have lived under other political institutions; nearly a third of my life, since I came to years of discretion, has been passed under other forms of Government; and I have learned enough of the state of foreign societies, and enough of the political condition of the great majority of this race of man, to be well contented with what Providence has given to us, in the Constitution of the United States. I am contented to live by it: contented, when I die, to leave my children in its safeguard: and I would sooner lay down this right hand, to be cut off, than I would hold it up to vote for any essential change in this form of Government.

The honorable mover of these resolutions tells us, that he was induced to propose them, because he regards the subject-matter of them as the most important function of this Government. Highly important, sir, it unquestionably is: far too important, in my view of the subject, to admit a change in this part of the compact. But I cannot agree with the honorable gentleman, in thinking it the most important function of the Government; and, if he will permit me the reflection, I must say, that we do lower the tone of our politics, that we lower the tone of our legislation, that we lower the tone and spirit of this people, by allowing questions of this kind so much importance. I am free to confess, sir, that I regard very many functions of the Government as more important than the election of President. The constitution of this House; of the other House; of the Judiciary; the power of Congress over questions of internal improvement; the power of acquiring and governing territory, without limitation, beyond the bounds of the United States—these are far more important than the modification of the election

of President. And if I believed the power of amendment was unrestricted, I would much sooner discuss, for days and weeks, amendments to the constitution, that should touch some of these questions, wherein the great interests and industry of the country are wrapped up, than those which we have now in hand. Sir, I take the error to be, that of confounding what is of importance to the individual citizen with what is important to the people at large. To the individual citizen, to the few prominent political leaders, whose talents and services place the office of President within the reach of a laudable and well-regulated ambition, it is, unquestionably, a subject of the greatest importance. To them it is a question, whether they shall attain the highest honor, which this or any other country, in this or any other age, ever did or can afford. But is this the light in which the office is presented to the majority of the people? No: the constitution of the United States has given no powers to the President, depending on the modification of the electoral choice, by which he can be made dangerous to the purity of the country. Do not mistake me, sir: I do not say, because I do not think, that we may not have a President dangerous to the liberties of the people—dangerous to the liberties of the constitution. But if we ever have such a President, it will be under circumstances not connected with the modification of the existing constitution, relative to the electoral choice. A dangerous President, depend on it, will be chosen by an overwhelming majority. I thought that the honorable mover of the resolutions was in a great mistake, in this part of his argument; where he maintained that, in proportion as the President was deficient in popular strength, his administration would be ominous to the welfare of the people. Within reasonable limits, I hold the direct contrary to be true: and that the event the most ominous to this constitution, and to the liberties of this people, would be, after a contested election, the triumph of a well-organized, embittered, and exasperated majority. A dangerous President will be a strong President; and a strong President, to make him unduly so, must be backed by a strong majority in this House, and a strong majority of the people.

But, sir, the gentleman argued, that this was not only the most important function in the constitution, but that it was a function in which the constitution had completely failed. This, I regarded, not only as an erroneous proposition, but as wholly at variance with another proposition, in a subsequent part of the gentleman's argument; which was, if I did not misunderstand him, that all the Presidents whom we have had, with one exception, were the ablest and best men which the country afforded, and were really the choice of the people. Now, sir, we have had ten Presidential elections: they have resulted, the gentleman says, with one exception, in the election

of the ablest and best men—each of whom was the choice of the people: and that exception, if I understood his allusion, was of an individual, who, beginning with President Washington, and coming down, has received the highest marks of confidence, and has been placed in the most responsible stations, by all those ablest and best men. And this, the gentleman calls a complete failure. I call it complete success. I beg leave to tell the gentleman that, if he expects, by an amendment of this constitution, or by a new constitution, in this or any other country, to the end of time, to get a Government that will not be found to fail, at least once in ten times, in its practical operation, he will be disappointed. A result like this, stretching over our whole history, and giving us the ablest and best men of the country, in succession, with a single exception, and that exception made by a political opponent, which (I know the gentleman's candor will permit me to add) detracts something from its weight—such a result, I say, is perfect success, unexampled success, glorious success; and I would not alter a letter in the constitution, in the hope of obtaining a happier operation.

In respect to the controversy which forms a leading part of the honorable gentleman's argument, the alternative of the General Ticket and District system, I have not much to say: the rather, as I conceive the practical operation of the two systems to come nearly to the same thing. I say this, on grounds of reasoning, and I am not aware that there is any thing in experience, to bring us to a different conclusion. The two systems, in the long run, must come to the same thing. On the general ticket system, supposing it to be uniformly adopted throughout the United States, the unrepresented minorities would be balanced by each other; or, in other words, the minority, whose voice is not heard in one State, on one side of the question, would be balanced by the minority, whose voice is not heard, in another State, on another side of the question. On the district system, the same result would take place. The minority represented in the Electoral Colleges, on one side of the question, in one State, would be balanced, and being balanced, would be neutralized, by the minority represented in another State, on the other side of the question: and therefore, in their practical operation, there would be very little to choose, between the two systems.

I grant to the gentleman from South Carolina that diversity, in this respect, is an evil. It is an evil that one State should appoint its electors in one way, and another State in another way. I admit that this is an evil, for which a remedy is desirable; though I do not know—if no other remedy could be applied—whether it would be expedient (if it were competent to us) to alter the constitution for this purpose. But the gentleman himself tells us there is another remedy. He says that, as the constitution now is, without any alteration,

the States will all be led to adopt the General Ticket system. If the States will all adopt the General Ticket system, without an amendment to the constitution, then the only evil which admit to exist, is remedied: for I maintain that it is no evil that the General Ticket system should prevail, rather than the District system; because, in their practical operation, they must come to the same result. In the few observations, therefore, which I have to make on this part of the gentleman's argument, I desire to be understood not so much as being opposed to the District system, as wishing to show, that some of those inconveniences, which he traces to the General Ticket system, are equally incident to the District system: and that others flow, not from this or the system, but from human nature itself, and are evils inseparable from any kind of choice.

The first argument by which the gentleman supported the amendment, which goes to introduce the District system, is, that, as the constitution now stands, we have no constitutional provision at all. He even said that, on this subject, we have no constitution. In other words, because the constitution gives to the States a discretion on this point, and because the States have exercised this discretion differently, in different States, and at different times, in the same State, we have, therefore, no constitution. But this is confounding constitutional provision with constitutional restriction. This proposition is at war with the substantial principles of all our institutions: with that principle which lies at the basis of the entire Republic—to throw back on the States as much of the detail of the system as is possible. There is as much constitution here, sir, as in the other most important functions of the Government. There is as much constitutional provision for the choice of electors as for the choice of the members of this House. I have never heard it suggested there was no constitutional provision to fill these benches. They do certainly get filled without much difficulty; and the people are as well satisfied that they have the power to fill them, as they would be if there were a constitutional provision that prescribed the mode. We have the power to alter the laws passed by the States, regulating the time, place, and manner, of choosing representatives, and the time and manner of choosing senators; and we have never exercised this power. Is there, therefore, no constitution in these respects? There is another constitutional provision, that guarantees to each State a Republican Government. What is a Republican Government? Of how many branches does it consist? How to be chosen? For how long? What are the checks of these branches on each other? There is a word of all this in the Constitution of the United States; and yet will the gentleman say, that the whole institution of Republican Government is of less importance than the particular modification of the electoral suffrage for Pres-

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dent; or that, being (as it assuredly is) infinitely more important, we have no constitutional provision for it?

I repeat, sir, that it is the life and soul of this Government, to exercise no more power than is absolutely necessary, and to leave as much as possible to the discretion of the States. It is for want of some such adjustment as this, that all the Governments that have ever been established over widely extended regions have fallen to pieces. Sir, I am willing to retract what I said. I am ready to think that, in this respect, this constitution is perfect. When I consider this partition of powers, when I see how the separate States are relieved from all the perplexity of foreign relations, and how the General Government is relieved from all the odium of local administration, I am ready to pronounce it in this part, a perfect system. I apprehend there are no limits to the possible extension of this Government in this respect. I believe it might go into harmonious operation, from Labrador to Cape Horn, as easily as it does from Maine to Florida—I mean as far as this part of the system is concerned. I think this is a part of the constitution which, of all others, ought to be treated sacredly.

But, at least, the gentleman contends, we have no constitutional provision which results in uniformity. Even this, as I have already had the honor of stating to the committee, is at war with his admission, that the constitution, such as it is, will practically result in uniformity. That uniformity is not, I know, *the* uniformity which the gentleman prefers; but it is the uniformity of one system, if not of another. But I will waive this point, and will follow the gentleman for a moment, in the argument on this subject of uniformity; and I must ask leave to say, considering that this idea of uniformity is the basis of his system, that I could wish he had applied a little more of that sagacity, in which few men equal him, in analyzing the idea of uniformity.

There are many incidents to the electoral choice. In some of these, uniformity is provided for by the constitution, as we have it. In others, where it does not exist, the gentleman wishes to provide for it; while, in others, and in those, in my judgment, not of less importance, he leaves it still wholly unprovided for. We have a uniform constitutional provision, which ascertains the power that shall appoint the electors; the *States* shall appoint them. We have a uniform constitutional provision which ascertains the tribunal that shall decide how this appointing power is to be exercised; the *Legislatures of the States*. We have a uniform provision that ascertains the number of electors to which each State shall be entitled. Here is a great deal of uniformity, as much, as I have already said, as exists in other most important parts of this Government. But the gentleman maintains that it is not enough. There is one discretionary element in this system, and the States have

exercised that discretion by no fixed rule. This must be remedied; and he proposes, as a remedy, to prohibit the States from exercising this discretion, and to lay out the United States into a uniform system of Districts. I beg that the order of the words may be marked, a uniform system of Districts. Sir, that is one thing; but is it to be a system of uniform districts? for that is another thing; though the vital difference between them has been overlooked by the gentleman from South Carolina. I will suppose that the State of which I have the honor to be a representative, shall be entitled, as now, to fifteen electors, and that it shall be required to be laid out into a system of districts, and that the districts are to be uniform. Suppose this operation to be begun by running a line through the State, a parallel of latitude or a meridian, and dividing it into two portions, as nearly equal as may be, so that we shall have eight electors on one side of the line, and seven on the other. Suppose that, on one side of the line, those qualifications of voters shall prevail which obtain in Virginia, which my friend from that State (Mr. AROBER) thinks the very perfection of the electoral franchise, which shut out from the polls more than one-half of the arms-bearing and tax-paying free citizens, while on the other side of the line, universal suffrage shall prevail. Now, sir, when we come to divide these two portions of the State into districts, though we may call the system uniform, are the districts uniform? Does each of the districts on one side reflect the same quantum of popular voice and popular will, as on the other side? No, sir; we have the *word* uniformity, and it is the only thing we have; and that is in the wrong place. The very object at which the gentleman aims, under cover of this word *uniformity*, eludes his grasp. The system is uniform so far as this, that all the States will be divided into districts; but the districts are as un-uniform as possible.

Is this doubted, sir? Look, for a moment, at the qualifications of voters in the different States. I have, for this purpose, looked through the constitutions of the United States, as contained in the collection printed in eighteen hundred and twenty, and comprehending all of them but the very last; and I think I may say that I have not found two States in the Union where the qualifications for voters are precisely the same. It seems as if the ingenuity of the framers of them had been tasked to find out some qualifications for voters in each State that should differ a little at least from the qualifications in every other State. In some of them it is required that the voter should be a citizen of the United States; in others it is not. Now, from one Presidential term to another, we have forty thousand emigrants arriving in this country. Under one State constitution they may be voters if they possess the other requisites; and under other constitutions they cannot be. This is of great importance: for it might put it in the power of an irruption of

this kind from abroad to change the fate of a contested election. Then, apart from slavery, there is the discrimination of color. In my State, that forms no disqualification; in most other States it does. Now, sir, in the State of New York, there is a free colored population near half as large as the entire population of that State (Delaware) which you so worthily represent, and which, in New York, is not entitled to vote except under a burdensome qualification of property, and, in most States, is not entitled at all. Is not this a great difference? The distinction of sex; even that is not a constant discrimination. In one State (New Jersey) all the inhabitants possessing fifty pounds of proclamation money may vote; and, in times of high party excitement, the inhabitants have all voted, male and female, till the evil was thought so considerable that an honorable gentleman over the way, (Mr. CONDICT,) fearing the possible effect of this new gynocracy, more prudently than gallantly undertook to apply a remedy; and proposed a law, which took from the fairest and best part of creation that influence at the polls which we are all willing to concede to them everywhere else. But this exclusion is only a matter of law; the constitution remains the same; and, in times of high party excitement, should they ever return, who shall tell us that sex will not again make a variety in the qualifications of voters in the different States? Again, the diversity in property, as a qualification of a voter, is so great that, in one State, more than half the free population, who pay taxes and bear arms, are excluded, while other States admit to the polls the poor man who has nothing but his life to bind him to the community, nothing to contribute to its support but the labor he bestows on the highway, but whose life and liberty are as dear to him as the broad acres of his rich fellow-citizen to their possessor. Lastly, there is the great distinction between freedom and slavery, which allows the friend who sits at my right hand, (Mr. HAMILTON,) to have near twice as much political power as is conceded to me, being a citizen of a non-slaveholding State. Yet, you tell me, sir, that a system, which takes no account of this discrepancy in the qualifications and numbers of those who compose the districts, is uniform. Certainly, it is any thing but uniform.

The answer made by the gentleman from South Carolina to this difficulty, is, that, if this were a matter of ordinary legislation; if it were a matter within the grasp of the changeable discretion of a State, he should think it was an evil that called for a remedy. Sir, if it were, as he represents the matter, a constitutional fixture in the States, it would only prove that no remedy could be had. It would only prove that uniformity was not merely difficult to be had, but positively unattainable, the obstacles to it being guaranteed in the constitutions of the States. But it is not competent for the constitutions of the States to make any limitations on this subject. The constitutions of the States

cannot fix the qualifications for voters; electors of President and Vice President. It is left to the legislatures of the States, and is much within reach of amendment (or alteration as I should rather call it) of the constitution as any thing in this connection. If the gentleman, therefore, wishes to have a uniform system, he must—there is no avoiding it—bring the proposal of an amendment, which will lay off this country into districts, each of which shall represent an equal portion of the population; of the power, the knowledge, the desires and interests of the people of the United States. Any thing short of this, may have a greater degree of merit; but it will not have the merit of uniformity.

Further, sir, it is in the regulation of the qualification for voters, that the most successful attacks may be made on the purity of the electoral franchise. Will gentlemen consider what is now passing before us, in the great Kingdom of France—a kingdom, at this moment so instructive to the American statesman in its events there passing, (though they may be as astonishing and alarming than those of former periods,) than it has been at any time within the last fifty years. There they are making the experiment of a grand electoral system. The vast territory of the kingdom, comprising thirty millions of inhabitants, is laid out into departments and arrondissements, they have electoral colleges of arrondissement, and electoral colleges of department, and all looks so fair and systematic as the diagrams in your General Land Office; and what is the result? It is so contrived, by regulating the qualifications of electors, that, in a Chamber of Deputies consisting of four or five hundred members, and at a time when popular opinion was perhaps equally divided in the Kingdom, there were some fifteen or twenty members of the royal party, and all the rest were on the side of the Crown. This is what an artificial regulation of the qualification of voters can do, in perverting the purity of the electoral franchise. I wish to be understood, sir, as speaking on American principles; I am not sure that a representation like ours would be safe in France.

And here, sir, I feel it my duty, in reply to some intimations of the honorable gentleman, to make a single remark, showing the inconvenience of treating this subject, not as a constitutional question, resting solely on the terms of the compact, but as one of abstract political right. The gentleman spoke of the spectacle of ten millions of freemen marching to the polls; and he alluded to the late election as an election that had resulted in the choice of a candidate, who was not the favorite of the people. Now, sir, if I enter into a political compact, by which I agree that my friend shall have two votes, while I shall have but one, I will not afterwards murmur at the terms of that compact. I will not say it is a hard compact, especially if I do not think so, as I do in this case. When you come to count up

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result of the election, I will not refuse to admit that his candidate has twice as many votes as mine, if that be the arithmetical balance. But when we come to talk of popularity, that is another thing; and I cannot permit it to be calculated by the ratio of the three-fifths. And for this reason I must insist that the honorable gentleman is not authorized to say, that the last election resulted in the choice of an individual who was not the favorite of the people; I mean taking the majority of the votes as the guide to that conclusion.

Having touched on this point, I ought, perhaps, to add that, if there are any members in this House of that class of politicians to whom the gentleman from North Carolina (Mr. SAUNDERS) alluded, as having the disposition, though not the power, to disturb the compromise contained in the constitution on this point, I am not of the number. Neither am I one of those citizens of the North, to whom another honorable member lately referred, in a publication to which his name was subscribed, who would think it immoral and irreligious to join in putting down a servile insurrection at the South. I am no soldier, sir: my habits and education are very unmilitary; but there is no cause in which I would sooner buckle a knapsack to my back, and put a musket on my shoulder, than that. I would cede the whole continent to any one who would take it—to England, to France, to Spain: I would see it sunk in the bottom of the ocean, before I would see any part of this fair America converted into a Continental Hayti, by that awful process of bloodshed and desolation, by which alone such a catastrophe could be brought on. The great relation of servitude, in some form or other, with greater or less departures from the theoretic equality of man, is inseparable from our nature. I know of no way by which the form of this servitude shall be fixed, but political institution. Domestic slavery, though I confess not that form of servitude which seems to be most beneficial to the master—certainly not that which is most beneficial to the servant—is not, in my judgment, to be set down as an immoral and irreligious relation. I cannot admit that religion has but one voice to the slave, and that this voice is, "Rise against your Master." No, sir, the New Testament says, "Slaves obey your Master;" and though I know full well, that, in the benignant operation of Christianity, which gathered master and slave around the same communion-table, this unfortunate institution disappeared in Europe, yet I cannot admit, that, while it subsists, and where it subsists, its duties are not pre-supposed and sanctioned by religion. I certainly am not called upon to meet the charges brought against this institution, yet truth obliges me to say a word more on the subject. I know the condition of the working classes in other countries; I am intimately acquainted with it in some other countries, and I have no hesitation in saying, that I believe the slaves in this country are better clothed and fed,

and less hardly worked, than the peasantry of some of the most prosperous States of the Continent of Europe. Consider the checks on population. What keeps population down? Poverty, want, starvation, disease, and all the ills of life; it is these that check population all over the world. No wth the slave population in the United States increases faster than the white, masters included. What is the inference as to the physical condition of the two classes of society? These are opinions I have long entertained, and long since publicly professed on this subject, and which I here repeat in answer to the intimations to which I have already alluded. But, sir, when slavery comes to enter into the constitution as a political element, when it comes to affect the distribution of power amongst the States of the Union, that is a matter of agreement. If I make an agreement on this subject, I will adhere to it like a man; but I will protest against any inferences being made from it like that which was made by the honorable mover of these resolutions. I will protest against popularity, as well as votes, being increased by the ratio of three-fifths of the slaves.

I shall proceed now to offer a few cursory remarks on the merits of the different modes of choosing Electors, as discussed by the honorable gentleman.

The gentleman passed lightly over the appointment of electors by the State Legislatures: he treated it as a manifest usurpation, in which he had the concurrence of the gentleman from New York, (Mr. STORRS.) I did intend to have said something more in detail on the subject, but the gentleman from Virginia (Mr. STEVENSON) has so exhausted it, that it is not necessary for me to go into that argument. I shall only remind the committee, in addition to what was stated by that gentleman, that, in the first appointment of electors, in 1788, before the constitution can be said to have gone into complete operation; at that early moment, a very considerable proportion, all the States but three, did appoint their electors by the act of their Legislatures. In my own State they were appointed by the concurrent act of the Legislature, and the people—the people in large districts making a nomination of twice as many persons as the State was entitled to appoint, from which the Legislature selected the electors. We hear a great deal about contemporaneous exposition, and we have the Federalist quoted, and Mr. Dickinson quoted, and other sources of the same kind, which certainly I hold in all respect. But I do think the solemn acts of the great majority of the Legislatures of this country are as good a contemporaneous exposition as the speculations of any individual statesman, however respectable. An appointment by the State Legislatures is not a mode that I am partial to—nor is it popular in my State; but I cannot agree with the gentleman from South Carolina, and the gentleman from New York, who spoke first, on this subject, in calling it a usurpation.

Let us pass to the consideration of the Gen-

eral Ticket system. The first objection to this system, which the honorable gentleman urged, was, that it had the effect of crushing the minority; and he drew a distinction between that submission of the minority to the majority, which is necessary in all Governments, and a total annihilation and prostration of the minority. I must say, sir, with great deference, that this seemed to me a distinction without a difference; because the choice is to result in an individual. Suppose the President to be chosen by Districts—there are two hundred and sixty-one votes: He may be chosen by one hundred and thirty-two. What will become of the remaining one hundred and twenty-nine in the minority? Are they not annihilated? Are they not crushed? are they not prostrated? Where are they represented? where is their voice? who knows or cares what they think? The President is chosen by the constitutional majority of Districts. This is a result from which, on the principles of the honorable gentleman, you cannot escape. The same holds in our State elections—in the election of Governor, the election which calls out, and that for very good reasons, the heartiest zeal of the people, in the State I, in part, represent. There have been great heat in these elections: they have been very closely contested, and in a vote of eighty or ninety thousand citizens, the successful candidate has sometimes been chosen by a majority of two or three hundred; yet I have never heard it hinted that, even in that extremity, the minority was not fairly and fully represented.

But the view of this subject on which the gentleman seemed most to rely, to demonstrate the unfair operation of the General Ticket system, was the case of two States, one of which should be unanimous in its preference of a candidate, and the other, a little larger, should be almost equally divided. By the operation of the General Ticket system, it might happen, that the favorite of the majority in the large State, though the choice of but about a quarter part of the aggregate population of the two States, would still be chosen. Why, sir, that is one possible result of the General Ticket system, as considered between two States. But I will show you another result, not only equally possible, but far more probable. Take the case of Pennsylvania and New York: Pennsylvania, being unanimous, and giving twenty-eight votes to her candidate; New York, not being quite unanimous, but giving thirty-one votes to her favorite candidate. There is a great contest between these rival States, their candidates are each aiming, and their States for them, at the brightest, the most glorious prize in the world; and you call in the small, discontented, factious minority of New York, five votes only out of thirty-six, and say to this minority, you shall be the umpires in this great question; we will leave it to you, impartial unprejudiced men! to assign this most precious prize. Sir, to whom will they assign it, under the influence of those

feelings, which cannot but actuate so small a minority in so great a struggle? Unquestionably to the Pennsylvania candidate; unquestionably against the majority of their own State. Is this a result which would tend to harmonize our Republic? No, sir, it would tend to civil war, as much as any ground of contention between two powerful and neighboring States in the Union, on the subject of this election.

But, I have a better answer to the case of the honorable gentleman. It is a case, which, on his principles, cannot happen. The remedy he provides, supposes the non-existence of the disease. If his premises are true—I will not say his conclusions do not follow—I say they cannot follow. What is his general supposition? That States are not unanimous—that States have minorities; and the evil is, that those minorities should be unrepresented. What is the gentleman's particular case? Why, that out of two States, one is unanimous, and one is not; whereas, the first supposition is, that the States are not unanimous. Now, if, out of two States, one is unanimous, out of twenty-four States, twelve will be unanimous. The probability is, that States will not be unanimous; the probability is, that the minority in one State will be balanced by the minority in another; the further probability is, if there is a unanimous State in one part of the Union, on one side of the question, there will be a unanimous State in another part of the Union, on the other side of the question. In contradiction to these premises, the gentleman puts a case, amounting to this, that out of any two States, one will be unanimous, and that one will be nearly equally divided. The supposition, therefore, is contrary to his own premises.

This leads me to remark, that the fair protection of the minority is in the majority of the other States, and it is not necessary to make any further constitutional provision for it. The gentleman from South Carolina seems to be, as was very forcibly shown by the gentleman from Virginia, (Mr. ARCHER,) in the error of confounding the choice of an Executive officer—who is not a *Representative* of any part of the people, not even of those who choose him—with the constitution of a representative body like this, for which it is necessary that the country should be divided into the smallest practicable sections, and that each section should have its representative, in order that its local peculiarities and interests should be attended to. But far different is the case of the President; he is an Executive officer; he must carry the laws into execution equally for all—Tros Rutuluave—he is not the President of this or that party. He cannot say, if he would, this law, which bears hard on my friends, shall not go into execution against them; but for those others, my opponents, I will grind them to powder with it. If the representative of any, he is a representative of all, and this by the necessity of his office; it is

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not a matter of choice with him. Now, in creating this President, the constitution provides two hundred and sixty-one moments of power. To New York it gives thirty-six of them; and how shall New York exercise this her share of that power? In such a way, certainly, as to gratify the greatest portion of her citizens; and to obtain that result, the question must be put to a vote of the people, as the people of New York. No, says the gentleman, if New York happens to be divided, as nineteen to seventeen, I will take away thirty-four thirty-sixths of her power. Just in proportion as her citizens deviate from unanimity, I will mulct them in a thirty-sixth of their voice in the election of the President, and when they are equally divided, they shall have no power at all. The gentleman will contend that this evil will find a remedy in other States, where a similar result will be produced; and what New York loses in one way, she will gain in another. That, sir, I grant, is the practical operation; I have allowed, I have urged that, on this very principle of compensation, there is between the General Ticket and the District system very little practical difference. But, in the one system, it is a stipulated provision; in the other, it is a practical effect.—The majority, not the minority, are entitled to the stipulated provision, that their will shall prevail; and it is enough to console the minority, that, in the practical operation, what they lose at home, they gain abroad.

I think the gentleman's next objection to the General Ticket system was, that it tended to form and keep up geographical parties. This would have been plausibly and even forcibly stated, if it had been true that the States are geographically peculiar, or that those sections of country which are geographically peculiar, are so many States. But this is not the case. We have in this country, and I am not sorry to see it, because I believe it is one spring of our prosperity, the materials, perhaps, for five or six geographical parties or geographical interests. I think we may carve out of the map an Eastern, a Central, a Southern, a South-western, and Northwestern section. I do not think at present, you can get more. Now these sections are not States, to be bound together by the General Ticket system, so that they will, in virtue of that system, vote unanimously in any given case. I think they never will do it. Even in New England—which the gentleman from Virginia (Mr. ARCHER) named as the part of the Union most likely to march in phalanx—even in New England, a unanimous vote will rarely, if ever, be given. Geographical parties must rest on geographical bases. You might as well talk of the sound of a color, as of a geographical party, that rests upon any thing but a geographical basis; and when you get a geographical basis, when you get any thing that interests New York as New York, or South Carolina as South Carolina, do not you think, sir, they will go in a phalanx,

whether you have the District or the General Ticket system? Believe me, they will. Geographical parties are not to be divided by those imaginary lines which you are going to run between your electoral districts. The Alleghenies, the Mississippi, the Potomac, the Hudson, the great Lakes—these will make geographical parties, if any thing is to make them.

But, sir, I am not prepared to admit that geographical parties are the greatest evils this country has to fear. Party of all kinds, in its excess, is certainly the bane of our institutions; and I will not take up the time of this committee by disputing, which is most deleterious, arsenic or laudanum. It is enough that they are both fatal. The evil of geographical parties is, that they tend to sever the Union. The evil of domestic parties is, that they render the Union not worth having. I remember the time, sir, though I was but a boy, when, under the influence of domestic parties, near neighbors did not speak; when old acquaintances glared at each other, as they passed in the streets; when you might wreak on a man all the bitterness of your personal and private enmity, and grind him into the dust, if you had the power, and say, he is a democrat, he is a federalist; he deserves it. Yes, sir, when party spirit pursued its victim from the halls of legislation, from the forum, from the market place, to what should be the sanctuary of the fireside, and filled hearts that would have bled to spare each other a pang, with coldness and estrangement. Talk not to me of your geographical parties. There does not live the man, I thank God, on earth, towards whom I have an unkind emotion—one whose rights I would invade, whose feelings I would wound. But if there ever should be a man to whom I should stand in that miserable relation, I pray that mountains may rise, that rivers may roll between us—that he may never cross my path, nor I his, to turn the sweetness of human nature into bitterness and gall in both our bosoms.

I believe the gentleman's next objection to the General Ticket system, was, that it tended to throw the power of the State into the hands of political intriguers, through the instrumentality of that much-famed political institution—the caucus. On this subject I cannot speak with much confidence. I never attended a caucus in my life, except as an edified spectator—one among four or five thousands, assembled in Faneuil Hall, to do what we are now doing—consider the state of the Union. Farther than this, I know nothing from experience on this subject. The gentleman tells us that it is of the nature of the caucus, that by the aid of that political organization, it is in the power of five or six leaders, in the command of four or five thousand well-drilled veteran troops, to put to flight twenty thousand of the ordinary voting militia. But I suspect the gentleman overrates, or he mistakes in his haste, the power of the caucus. I believe it may recon-



cile, on one great point, a previously ascertained majority, of which the members had been separated only by subordinate divisions—I believe it may enable a previously ascertained majority to act in concert and unison with each other—I believe it may serve to reduce a question to an issue between a majority and the minority. Farther than this, I cannot believe that caucusing can go. It is a game at which more than one side can play; and I do not believe we are so wanting in “political magicians,” or whatever you choose to call them, that four or five are all that this country, or any State in it, at one time, can produce; and that they will all be on one side. I believe, that, taking things as they are, the only way you can put twenty thousand voters to flight, is by marching up to the polls with twenty thousand and one—that will do it, and nothing else will.

But, how does the gentleman's system afford any remedy to the evil of caucusing? The only effect of the District system will be, that we shall have two hundred and sixty-one caucuses, instead of the twenty-four already provided for; or, (if you double the number, that each side may have its caucus,) five hundred and twenty-two instead of the forty-eight now likely to exist. This would most probably be the effect of introducing a uniform District system. Another thing: what is to become of the minorities on the District system? I could here tell the gentleman something about that arrangement in my own State, to which he alluded by a name—which, out of respect to a venerable patriot and statesman of the Revolution, now no more, and who had nothing to do with the transaction, I shall not repeat. At a time, when the parties in the State were nearly balanced, there was a small majority on the Federal side; fifty-one thousand, perhaps, on the one side, and forty-nine thousand on the other. In that state of public feeling, by virtue of a system of districts, consisting of adjacent territory, and the same amount of population, (for in all these details, I believe the division was perfectly fair,) it was so contrived that the minority chose twenty-nine State Senators, and the majority chose eleven; and more votes were given for these eleven, than were given for the twenty-nine. This is, indeed, an effectual protection afforded by the District system to the minority! The gentleman from Virginia (Mr. STEVENSON) pointed out to you, in the State of Maryland, at the last election, a similar result; affording an illustration equally strong of the benign effects of the District system.

In this part of the subject, the gentleman made a pathetic appeal to the political leaders of New York. He told them they must have felt, in the fluctuation of their parties, that it was really better for themselves, that they should not possess the power of alternately warring against each other the whole strength and patronage of that vast State. Sir, I care

not how often the parties of New York have been up and down. What are these fluctuations of party in New York to us, to them, to anybody? When I look at New York, which I always take a pleasure in doing, I can see nothing but her magnificent metropolis; her ever-multiplying institutions for charity, for science, for the arts, for social improvement; her Western paradise of abundance and prosperity; and the glory of the age, her great canal. These have gone on, are going on, and I trust will go on, under all the fluctuations of her parties; whilst I could name to you States which have always marched to the polls in a Macedonian phalanx, that have fallen far behind New York in these great objects of social organization. As to the parties in New York I have read their papers more or less for fifty years, and I do not now know the meaning of their little local appellations, nor am I going to lay my hand on the constitution, and alter it in order that the factions in New York

“May fall with dignity, with temperance.”

No, sir, this consideration will, I trust, a mature reflection, have no weight even on the mind of the honorable gentleman who suggested it, as an *argumentum ad hominem*, addressed to the politicians of that State.

The last chief argument of the gentleman on this subject was, (for I must pass over some topics in this discussion,) that the admission of the District system was the only compensation which the large States could offer to the small States, to induce them to give up their equality in the eventual choice of a President in this House. Why should they give it up? The gentleman says they should give it up, because in the first place, it is an illusory power—a power not possessed by a small State, but possessed by the single individual of that State called to exercise it on this floor. But there are States which have more than one Representative, and which are yet to be called small; and I think, on his own principles, I could prove to the honorable gentleman, that it is a real substantive power possessed by these smaller States, that, as such, they stand on an equality with the large States when the election comes to this House. At any rate, if the gentleman objects to the exercise of the power here, he must consent to adopt the amendment proposed by the gentleman from Pennsylvania (Mr. BUCHANAN,) which, though it takes the eventual choice from this House, secures to each State its equal vote. No, says the gentleman from South Carolina, the majority of the people will not consent to be governed by a minority.

I entertain a high respect—the gentleman, I am sure, believes that I do, an unaffected respect—for his talents and political sagacity; but when I heard this proposition fall from him, I was at a loss in what light to regard it—serious I could hardly consider it; less than serious, of course, the occasion did not admit.

The majority not submit to be governed by

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the minority! Look at the other end of this building, sir—look at the Senate—of which it was so justly said by that distinguished statesman, who, in his constitutional capacity, sits in the chair of that House—when he acceded to that chair, by the almost unanimous voice of the nation, while the other branches of this Government are confined, with few exceptions, to what may be considered their appropriate powers, to the Senate alone is granted a participation in all the different powers of the Government, Legislative, Executive, and Judiciary. Yes, sir, and what is the constitution of that Senate? What is the power of the majority of the people there? Pass what bill you please in this House, by a majority of four to one, and send it to that House, and it may be rejected by the Senators from those States whose representation on this floor is forty-five out of your two hundred and ten. Do you impeach a functionary of this Government, and demand justice on him, by a vote of one hundred and ninety to twenty? When you carry the impeachment up to that House, the Senators of the States represented on this floor by twenty members, can deny you the justice which you, and the people, through you, demand, in a proportion of nine to one. Fall into a state of war; let the country be reduced to the last point of exhaustion; let a treaty at length appear, with the olive branch of peace; let there be a faction in the Senate, from States which stand in the proportion of one to ten in this House, and they may reject that treaty. In the very last convention which that body did reject—the convention relative to the slave trade—one article was stricken out, though the vote stood, twenty-nine for retaining, and sixteen for striking out; yet it was stricken out, because there was not a constitutional majority for ratifying that article. Consider the power of the Senate over the Judiciary branch of this Government, which, in the late debates, was justly called the sheet anchor of the constitution. It is probable that, on the bench of the Supreme Court, there may soon be four vacancies. The Executive of this country might be prevented from sending the best man of the country into either of these vacancies, by a union of the Senators from the States whose representative power is only forty-five out of two hundred and ten; while this House would be prevented from driving the most undeserving individual from that bench, (in the supposition that any one could be there to whom such a character belongs,) though he united the venality of the Chancellor with the cruelty of Jeffreys, by a combination of the Senators from States who possess but a tenth part of the representative power on this floor. Yet, the gentleman tells us, that the majority of this people will not be governed by the minority.

Sir, disguise it as you will, this is a constitutional question. It goes to the compromise between the States, on which the Government rests, as on its corner-stone, as on its founda-

tion. In this system there are some features which are purely federative, some which are of a mixed federative and popular character; not one that is purely popular; yet, all that part of the honorable gentleman's argument—I do not certainly mean to misrepresent it—which insists on the right of the majority of the people to govern, would be applicable only to a system that was purely popular throughout. I should not have to vary this part of the gentleman's argument in the least, if I should adduce it, in support of an alteration of the kind I mentioned in opening my remarks, which would go to take away the equality of the representation of each State in the Senate. What is more unjust, on abstract principle, than that your State, sir, (Delaware,) should have as much power as Virginia, and my State should have as much power as New York? But these abstract principles here go for nothing. It is a compact, entered into by parties who said they would not agree to any thing else. When this constitution was drafted, Governor Randolph proposed to have a proportional representation in the other House, as well as in this. What did the small States do? They said, we will not take it, we will not agree to it; and, rather than accept such a constitution, we will break up the Convention. They said more, sir; that they would sooner take a foreign power by the hand, than have a constitution on the principle by which the honorable gentleman supports his resolutions. The election of President, and the adjustment of the two principles in that part of the constitution, was the other most difficult point. Mr. Wilson informs us, in his speeches in the Convention assembled in Pennsylvania to ratify the constitution, that this was the point on which the Federal Convention most labored; as it was also the point on which they thought themselves, and were thought by their contemporaries, to have met with the most perfect success. Now, sir, it is on this most delicate adjustment, that the gentleman lays his hand. In the primary election he proposes to take from the States the right to exercise their voice without division; and, in the secondary election, to take from the small States their equality of power in this House. As far as this goes, it is making a new constitution; it is opening the question from the foundation: it is breaking up every compromise which the constitution contains; and, as was observed by the gentleman from Virginia, (Mr. STEVENSON,) when this is done, it is not a matter of question, it is a matter of certainty, that you could not renew any of these compromises. At all events, any argument addressed on this subject to the committee, in order to have weight, must be, not an argument on general principles, as to the right of the majority to prevail over the minority, but a constitutional argument, to show that the adjustment of the Federal and popular principles of the Government requires to be revised, and settled on a different footing.

But, sir, I will briefly follow the gentleman in some of those arguments, by which he urged on the House the adoption of his first resolution, which goes to prevent the election from devolving on this body. I accompanied the gentleman, with unfeigned delight, in the broad and philosophical views, clothed in most eloquent language, which he took of many important subjects in general politics; and if I ever felt obliged to differ from him, it was not so much in establishing his principles, as in drawing his conclusions.

His general train of thought, in this part of his argument, appeared to be somewhat as follows: A vast extension of liberty has taken place in modern times, particularly in the United States of America. The great political problem to be solved, has been, to reconcile this great extension of liberty, with the strength of an Executive, sufficiently powerful to administer the Government. This, especially, was the problem to be solved by the framers of the Constitution of the United States, and the mode in which they decided it, was this: they created an Executive of great powers, and reconciled this power with the security of the constitution, and the preservation of the liberties of the people, by the principle of elective responsibility. This responsibility is to grow out of a popular choice; and, therefore, the honorable gentleman inferred that the choice should be sent back from this House, in some form or other, to the people. This appeared to be the general train of his argument.

Agreeing, as I cordially do, in the first proposition, that an unexampled extension of liberty is enjoyed, and constitutionally secured, in the United States, I cannot, on this part of the subject, go farther in unison with the honorable gentleman.

In the first place, the power of the Executive is not great, as the gentleman describes it, but very small. The gentleman stated it to be equal to that of the king of Great Britain. Sir, I must say that this seemed to me to be an exaggeration too violent to be admitted, even in the heat of argument. I shall not follow my friend from Connecticut, (Mr. INGRAMSOLL,) in the comparison of the powers of the king of England with those of the President, nor shall I trouble the committee by referring to the chapters in the *Federalist* on the subject—which I doubt not are better known to the gentleman from South Carolina, than to me—in which the same comparison is so forcibly pursued. I will confine myself to the single point of the tenure of the two officers—the President of the United States being elected for four years—the king of England being hereditary, and for life. In consequence of this single difference of tenure, the difference of influence between the two functionaries (and it is a question as to influence) is positively infinite:—I cannot use a weaker term. I hesitate not to assert that, if I have learned any thing

of English history, it is this: that, if the king of England had been elective, and for four years, there has not been a ministry, since the time of the Cecils and the Walsinghams, that could have sat on their benches for four weeks. Sir, the President has no power of the nature to create influence: he can do nothing of himself, in that way. The only power that he may be said to have, which is absolute—and this is not of a nature to confer personal influence—is that of negating a law passed by less than two-thirds of Congress. As to patronage, he cannot appoint to an office of one hundred dollars per annum, without the consent of thirteen sovereign States. He cannot treat with a foreign power to build a light-house on a desolate rock, without the ratification of sixteen independent States. There is only one office, I believe, to which he has the power of appointment; and I have now, in my drawer, a resolution to take from him that solitary piece of patronage—the office of Librarian to Congress.

No, sir, the Executive is not strong. It therefore needs no curious search after the principle, by which the strength of the Executive is to be reconciled with the liberty of the people. The framers of the constitution went on no such search, for a principle of reconciliation between the liberties of the people and the powers of Government. They went on a far simpler and nobler principle; that of giving to the Governors no power likely to be abused, in the circumstances under which it is given to them. They went rather on the principle of having no Governors at all. I thought it was very justly said, on this floor, a few weeks since, that we have no Government; there is nothing in this country which deserves the name of Government; or, if there is any Government, it is here: if there is any throne, you, sir, are seated on it. The people are, what they are often ironically called, the Sovereigns.

The gentleman may tell me that, if this be the case, our Government does not differ from the ancient democracies. Widely, totally, sir; and let us consider how: for it is in this that the great improvement of the modern political system resides. The improvement is, that we have, and act upon, what they had not, or in very imperfect degrees, and in very limited measures—the idea of delegated power. What is the nature of delegated power? That the people who delegate it, shall delegate just as much as is safe in the hands of man, as he is, and this upon the terms of a written compact, and for a limited period. And shall we be told, that one of the depositories of this delegated power, on the terms of a written compact, for a period of four years, has all the Executive power of the king of England? Who makes war, who makes peace, who issues Orders in Council with the force of law? who governs half the world in the form of colonies, possessing only the right of appeal to his little

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Privy Council? who grants pensions out of the droits of the Crown, over which Parliament has no control? that king who can do no wrong; that king who never dies; and who can raise the commoner to the peerage, by his sovereign will. The single power of pensioning, out of a fund over which Parliament has no control—the single power of raising to the peerage—exceeds all the power which, not the President alone, but all the branches of this Government united, possess, to corrupt the citizens of the country. And here, permit me to say, that, if my recollection does no injustice to the gentleman, he did injustice to the constitution, in quoting from it the specification of the Executive power. In the printed report of his speech, the words are, “all Executive power” is given to the President. But the words of the constitution are, “*the* Executive power;” and, instead of understanding, with the honorable gentleman, *all* the power given to any Executive of any country, the expression in the constitution imports *the* Executive power, which this written system gives to this officer, called the President.

This, I conceive to be the theory of our liberty, as far as the power of the Executive is concerned; and this liberty is farther secured by our statute of distributions, by our prohibitions of nobility, by our absence of standing armies, and other republican institutions, at war with those institutions in the old world which are the support of their monarchies. The gentleman's theory, on the other hand, is very nearly the theory of despotism. If the gentleman from South Carolina should go to an acute and philosophical subject of an absolute Government, he would find him to state the relation in which the monarch stands to his subjects, in very nearly the same terms in which he has stated the relation between the President and the people of the United States—the relation of almost indefinite power, exercised on principles of benevolence, love, and paternal feeling. He, too, would disclaim checks and balances, as power clashing with power. This is the motto of arbitrary Governments, since the world began:

nunquam libertas gratior extat,  
Quam sub rege pio.

This is not the theory of our liberty: the framers of the constitution did not provide us a kingly President. They provided an Executive, in the form of a dependent, a concurrent, a transitory, and an impeachable agent. The residuum, the greater part of the power, they kept in their own hands. There, sir, I love to see it too; there, I will also idolize it. In the hands to which it is constitutionally delegated, I will pay it proper honor, be they the hands of Presidents, Senators, Representatives, Electors. And, for the very reason that the honorable gentleman places confidence in a President chosen by the people, I also will place

confidence in the Representatives, who claim it by the same title.

In this confidence in delegated power, the gentleman ought to go along with me, thinking and speaking as he did, of the system of the ancient democracies, which we all regard as inconsistent with permanent and rational freedom. How have we improved on these democracies? The gentleman says, we have created an Executive, indeed, of kingly power; but we have reconciled that power with their liberty, through the elective responsibility, and the mutual love and confidence inspired by it, which (and not checks and balances) are the securities of the people's rights. Now, I have shown, on the one hand, that this is the principle of absolute despotism; while, on the other hand, by an unexpected fatality, it is the principle of unlimited democracy, and goes to the root of delegated power. He throws back the election, as far as possible, into the people's hands, because, if they do not exercise it themselves, it will not be safely exercised. The gentleman is certainly inconsistent. He asks us, with a tone of emphasis, whether the people are not fit to choose their President? I say they are. I am not going to be placed on the ground of denying that the people, in any and every resort, from first to last, in every stage, are fit to choose their President. I think they are most fit; and that is an answer to his question. And now allow me to propose my question to him: Are they not fit, also, to choose the four heads of Department? The gentleman answers, Yes. More fit than one of the most sagacious of our Presidents was to appoint them: more fit than the wisest President ever will be. Well, do not let us stop here: the argument gains by admission, as we proceed. Are not the people fit to choose the Attorney-General, the Postmaster General, the Judges of the Supreme Court, the Officers of the Army and Navy, the Foreign Ministers, the Collectors, the Surveyors? Whom are they not fit to choose? Will any gentleman pretend to say, of this, of that, or of any office, that it is one to which the sober sense of this people is incompetent for the election? I answer for every gentleman who hears me, there is not one who will take it upon him to say, that there is such an office. Then, sir, do not let us play with this subject: let us put our hand on this lion's mane: let us have an amendment which will go to the root of the matter: let us have an amendment to introduce universal suffrage, under which every officer, civil, military, executive, or judicial, shall be chosen by the people. Why will not the gentleman do this? His principles carry him to this extent. I will tell him why he will not do it—why no sound Republican statesman will do it—because this would be the ancient democracies over again: it would be forswearing all the improvements which have been made in political science. It would be giving up our representative institutions: shutting our eyes on the advantages of

a well-regulated system of delegated power. This I hold to be the reason; and a full and fair answer to all that the gentleman urged, on the fitness of the people to elect the President.

A word more, in this connection. The gentleman spoke with great force and eloquence on the subject of the art of printing, and of its power in diffusing intelligence and knowledge amongst all the members of the community; all the members of a State; throughout the world; and he contrasted our situation, in that respect, in reference to a capacity for a free Government, with the situation of ancient nations. I shall certainly not be one to contest the almost miraculous energies of the press, in the application for which the gentleman himself contends; and in which he is borne out by the facts. Still it is important to the argument to draw a distinction. It will not do for us to argue from what we should be, without the art of printing, after having, for four centuries, been building our whole intellectual system upon it, to what the ancient nations certainly were, never having had it. They had other instruments of improvement; not, indeed, so efficacious, but by no means contemptible. At the meridian of the refinement of Greece, there was not a considerable city in that country, not an important settlement on the Ionian, Syrian, Libyan, or Italian shore, not an island in the Archipelago; in a word, not a place of note on the map of ancient Greece, that had not made improvements in many of the most important arts of life, which we, with all our libraries, and all our books, have been able but partly to imitate. Among the means and instruments of this improvement, were domestic slavery, which delivered the free citizens from all the cares of gaining a livelihood; the itinerant minstrels, (Homer—who lived not only before printing, but before writing—was no more,) the traditionary wisdom of sages, travel to the seats of science and cultivation, manuscript circulation, and the living voice of living instructors. These were means of diffusing and transmitting intelligence and improvement, which I will not certainly put on a level with the art of printing, but which were adequate to the existence of free institutions. Sir, it was not want of intelligence—nor want of light: it was the want of something else, which we have: not the art of printing, but the representative system; the plan of delegated power; that great conception of modern times. If Athens, Sparta, Thebes, instead of arrogating to themselves successively a despotism—not over barbarous provinces, for that would have been a smaller evil—but a despotism over States as enlightened as themselves, had entered into a grand electoral and representative system; if they had given to each province its relative power in the General Government, convened their electors, from all those widespread States, from every part of the world where Grecian liberty had taken root, and Grecian letters had spread; had they thus

done as we have done; if it were not idle and pedantic to talk of what might have taken place, under different circumstances, two thousand years ago, I would say, that Greece might have stood, in all her glory, to the present hour. I see nothing to have prevented her, filled as she was with cultivated cities, with enterprising, intelligent population, and now more abundantly than at the moment when her liberties were overwhelmed. And what can I tell me ask, overwhelmed her? The consequences of that jealous policy which the gentleman enforces; which, to a certain extent, he wishes to engraft in the constitution. The language he holds to them is this: You did not like to cling to your local power, each within his little domain. You might have elected provincial representatives every year, but you could not have trusted them, in any given contingency, to designate from the few who yourselves had selected, one who should be your head. You might have taken the electors in your provinces into your own hands: you could not have trusted even yourselves. The people of Athens could not have trusted themselves to meet as the people of Athens, and express the will of the city of Athens. You must have stolen aside, the gentleman tells them, to your little districts. You must have given a voice to the virtuous minority in the Spartan interest, a voice to the virtuous minority in the Theban interest, a voice to the virtuous minority in the Macedonian interest, and a voice to the virtuous minority in the Persian interest. You might have called up your electors, your representatives, your presidents before you, as often as you pleased, and summoned them to account for what they had done. Every two years, every year, you might have passed them in review, and as each passed you, you might have thrust him from the line, if he had been unfaithful. It is all idle, all vain; that power is safe, of which you keep the exercise to yourselves: you cannot trust the purest hands in the community to be left up to vote for you.

If I did not fear to do injustice to an argument to which I listened with as much attention, I am sure, and I doubt not, with as much pleasure, as any member of this House, I should say, that, in this part of the gentleman's argument, he did not appear to pursue a consistent train of thought. He denounced the ancient democracies: and the arguments by which he supported his amendment, go to the root of delegated power. He spoke much and justly, of the essential virtue of the people in the community, and yet said, that the moment an individual was designated from this virtuous community, and by this virtuous community, to act in a constitutional function, he was open to suspicion. He enlarged on the intelligence diffused through all parts of the community, by the instrumentality of the Press; yet, I do not remember that he depended, in any degree, on the power of a virtuous

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public sentiment, and of an untrammelled free press, to preserve the balance between the people and their rulers; though it is, in my judgment, an element of our liberty inferior in value to none other.

And now I am brought to what I must deem an extraordinary part of the gentleman's argument, that which concerns the corruptibility of this House. But, in the first place, I would offer a few words in reply, on this subject, to the gentleman from Virginia, (Mr. STEVENSON,) who last addressed the committee. He said, with a liberality which, while I commend it in him, I certainly do not intend to deny to any other gentleman, that he would take the eventual election from this House, not because he believed in its corruptibility, but because he was desirous of placing it beyond suspicion. Beyond suspicion, sir: are we going, then, to alter—if you please, to amend—the Constitution of the United States, until, after a contested election, or before a contested election, the purity of leading individuals shall be beyond suspicion; and that, too, in a state of society, where the mild and merciful maxim is proclaimed and acted upon, that "the private character of a candidate for office is fair game to be hunted down?" Sir, beyond suspicion! Can any gentleman tell me how long it is, since an anonymous miscreant, in the papers, accused THOMAS JEFFERSON of having pillaged thirteen hundred dollars, I think it was, from the public chest? Has any gentleman forgotten that pathetic complaint of GEORGE WASHINGTON, that he had been assailed, in language fit only "for a pickpocket, for a common defaulter?" Sir, beyond suspicion!

"Be thou as chaste as ice, as pure as Snow, thou shalt not escape calumny."

But, as to the corruptibility of this House, I thought, in the first place, the argument which the gentleman from South Carolina built upon it, was at war with his own system. On this system, he says, choose your electors in districts, because, coming from the people, being chosen by the people, they will not betray the people. But how are we chosen? The greater part of us are chosen in districts. We came from the people, and we must go back to the people; we must meet them face to face. If the President is chosen by the people, says the gentleman from South Carolina, he is entitled to confidence; he is beyond suspicion;—beyond suspicion, because he is thus chosen. I say, then, by the same reason that this House is beyond suspicion—I mean, if the argument of the gentleman is good—and the rather, as we hold our places for two years, instead of four, and must sooner go back to the people from whom we came. I could not but think, therefore, that the gentleman's argument, in this respect, was inconsistent with itself. He says, choose the President yourselves, because he whom you choose will not betray you: and then choose him yourselves,

for this House (though of your choice) will betray you. He deems, at one moment, that kingly power, in the hands of the President, is safe, if the people have elected him; but, at the next moment, he maintains that a very limited power in our hands is unsafe, though we are chosen directly by the people.

But let us look at the matter of fact. I deny the peculiar corruptibility of this House. The gentleman compared us with the British Parliament, and the patronage of this Government with the patronage of that. Has he duly considered that, out of six hundred individuals, of which the House of Commons consists, it was asserted by Mr., now Lord Grey, in 1793, that about three hundred and seven, "forming a decided majority of the House," hold their seats by the gift or influence of one hundred and fifty-four individuals? Do we hold our places here by such a tenure? Does the American Representative buy his seat, and thus get a kind of equitable right to sell his vote? Can he unite high civil and military character with his Congressional station? Above all, is the coronet—that bright and splendid prize, which no subsequent demerits can abate, no revolution in politics take away, and which time and death, that conquer all things, can but partially tear from his hands, which, when wrested from the possessor, goes down with his name and fortune to posterity—that bribe which even Chatham, the gentleman's great exemplar of political purity, was unable to resist—is any such bribe held out to assail our purity? Sir, I cast off the character of a politician; I speak as a man; I say what I feel, and nothing that I do not feel. I was shocked when I heard the honorable gentleman—an intelligent and patriotic American citizen, as I know him to be—I was shocked when I heard him repeat, and, repeating, sanction, what, when it was first uttered, thirty years ago, was considered the insolent calumny of a foreign envoy; and which, taken in connection with his reference to what was said by Walpole, went the length of declaring that every member of this House had his price—that this price was so cheap as one as a dinner. Yes, sir, that we were literally ready to sell our consciences, our constituents, our country, for a mess of pottage. Sir, if this House of Representatives is not essentially pure, I ask, in the name of Heaven, what are the prospects of liberty in this world, under this dispensation? Where and when are you to have a free, safe, and representative Government? How are you to get it? How are you to keep it? The gentleman says, "lead me not into temptation." This is his remedy against corruption: do not set me to choose a President, and I will not abuse the power you give me on that occasion. This is, indeed, compendious politics. It does seem to me like the children's play: "Ask me no questions, and I will tell you no lies." The choice of a President is not the only, not the greatest thing, we have to do. Have we not peace and

war, life and death, prosperity and adversity, for ourselves, for our posterity, for all the nations perhaps to come, whose fate is involved in the success of this great example of popular institutions,—have we not all this in our power? Can we not, any day, by law, by constitutional law, turn half the industry of the country out of its channels, and spread bankruptcy, and ruin, and despair, over the land? Choose a President, sir! If we stop the passage of the Appropriation Bills, for the support of Government, where is your President and his Cabinet then? Scattered to the four winds of heaven, by the exercise of an ordinary act of legislation.

But the gentleman says, it is not merely office which is to be the bribe, but it is the emolument of office. Sir, if this House be what the gentleman represents it to be, does he not suppose, that in 1807 or 1811, the British Government would have paved this floor, and filled these desks with gold, to have had us choose France for our enemy? But, without resorting to the extreme supposition of foreign bribery, let me allude to what might have passed within our own country. Those "factious cities," those seats of corruption and intrigue, in the dark days of the restrictive system, when the grass was springing up between the paving stones of their streets; when their ships were rotting at the wharves; when the arm of humble industry, not less than that of gigantic speculation, was palsied; when the contriving head of that daily labor which must work for daily sustenance, was struck with stupor and despair; had this House been what the gentleman represents it, and those cities what he represents them, I would have raised the embargo in three weeks, and would have found the ways and means very easily to do it. But I will put this matter to a prompter test. If the gentleman from South Carolina will give me his vote, and that of twenty or thirty of his friends, not in the cause of corruption, but in one of the purest causes a politician ever maintained; if he will only give me his aid to procure a just indemnity for those fellow-citizens who, some fifteen, some twenty years, have been knocking at your door—some of them, as the gentleman from North Carolina (Mr. SAUNDERS) forcibly expressed it, shivering beggars at a bolted door—asking just compensation for those claims on a foreign Government, which, for your own political purposes, you renounced, and others equally strong, on the same Government, which you now neglect to enforce;—if he will give me his vote, and those of twenty of his friends, to procure our fellow-citizens this bare justice, when I come to call his attention to this subject, as I hope ere long to do, I will send him home in a coach and four. I believe there are about thirty millions at stake in that controversy, of which I will undertake for the claimants to pile up ten millions in that area for every gentleman to fill his pockets, till he cannot stagger from the

Hall with the weight. Does the gentleman object to the publicity of the proffer? Sir, we will do it with the silence of death; the contract shall be sealed at deep midnight; the conscious stars shall not look down upon the gentleman's left pocket shall not know what his right pocket receiveth.

I do but jest, sir, indeed, and perhaps too broadly, on a subject so serious as this; yet what have I done? I have supposed the gentleman to do in a single case, what he supposes the House always prone to do. I have supposed him to do, in a just cause, and for the tune, what he says we are all prone to do corruptly and for a dinner. But, perhaps the gentleman thinks I am doing him injustice: pushing his argument, to an extreme which he never contemplated, and in speaking of a bid of corruption he disclaims. I own, sir, that he did state, that he did not mean to say that the corruption was of a direct and pecuniary kind, although he did aver that gain was our aid, and that it was the emoluments of office that created the temptation. He said, however, I will grant, that the temptation was to come in the guise of honorable station and confidential trusts.

In this part of the subject; which is somewhat delicate, the gentleman very handsomely disclaimed all historical allusions to what we passed. He, however, alleged, if I did not misapprehend him—for I took no notes of his speech—that this House had been warned by experience, that corruption was on the threshold, and he made a somewhat significant allusion to that Mosaic Cabinet, which Burns has so happily and so memorably described.

In reference to this, and to ascertain by practical example, the extent of this danger to which our purity is here exposed, I desire to ask, what were the differences in political opinion which divided the various candidates for the chair, at one time, five or six in number, and their friends, during the late Presidential election? I had thought that, in the subsidence of the great parties which formerly divided the country, the choice had become, in a great degree, one of personal preferences; that every citizen was free to give his voice for the individual whose success he most wished to promote. I know, in the part of the country with which I am best acquainted, that the differences of political opinion were assumed to exist among the candidates or their friends. There was, indeed, an attempt made to enlist under the banner of that eminent statesman of Georgia, to whom a tribute so feeling, and I doubt not so just, (for I have not the honor of his personal acquaintance,) was lately paid by the gentleman in the chair, the remainder of the old Federal party against whom the gentleman from New York (Mr. CAMBRELENGE) says his city had to throw the shield of the country in the last war. But I never heard it suggested, that those who proposed, or those who acceded to this arrangement, had sacrificed

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their principles, or did any thing unbecoming of honorable men to propose or to do. They gave their support to the candidate they preferred.

Besides, sir, consider the necessity of the case. The candidates for the office are numerous: and but one, of course, can succeed. Is it not necessary that he who succeeds should take to his confidence some of those who, in some stages of the controversy, have been his rivals or competitors, or the active supporters of his rivals and competitors? If the distinguished citizen, to whom no man in the country feels greater gratitude than I, the Hero of New Orleans, whose services no one more heartily, more enthusiastically appreciates—if he had succeeded in this high contention, would he have driven from his councils *every one*, who, in any stage of the canvass, had been a competitor, or a leading friend of a competitor; or if he had acted in concert with any one, who had at first been his competitor, would it have been a proof of corruption against them both? And if, to avoid the suspicion of corruption, he had driven from his confidence, and excluded from his councils, every one of his four competitors, and all their leading friends, would he not both have stopped the wheels of the country's progress, and acted in direct opposition to that manly advice, which, so honorably to him the giver, so honorably to him who was the object of it, the gentleman near me, (Mr. DEATON,) he pressed upon the late President some nine years ago?

While I am on this topic, I will beg gentlemen to remember, that there is diversity of opinion on all these matters. Of political questions we may, with special propriety, hold with Sir Roger de Coverly, that a great deal may be said on both sides. The gentleman from South Carolina says it is universally admitted, that the favorite of the people was not chosen at the late election. The gentleman from Virginia (Mr. ARCHER) says that the people universally demand this amendment. I have only, on the other hand, to say, that it is universally admitted, that the favorite of the people was chosen; (and I trust some gentleman in this debate, will bring forward the facts, which I believe to exist, though I am not in possession of them, to prove that, as far as plurality of votes is the index, the favorite of the people was chosen.) I have only to say that the people call for no amendment whatever. What does it all prove? That the gentlemen think one way, and that I am so unfortunate as to differ from them.

Before this case of corruptibility is made out, the gentleman ought to take into consideration one element of political responsibility, to which he alluded at large in another part of his argument, but which he seemed wholly to omit here, where its most direct application exists: I mean the responsibility of the representative to his constituents. This is a test from which no man can escape; a pledge of the integrity of every leading statesman, at least, beyond the

power of any Executive patronage to counter-vail. Coming from the people, must he not go back to them? None is so high that he can be raised above this standard, and none is so obscure that he can sink away and creep below it. He must come up or come down to it; as the case may be. If a representative of the people, a member of this House, on a trying and a critical occasion, has defied the will, and bartered the interests of his constituents, think, sir, of the return of that man to his home. Will not shame sit upon his brow, and heaviness weigh on his heart, as he goes to meet the people whose will he has resisted, and whose rights he has sold? Will the trappings of Executive patronage save him in that awful hour? Will they not press him down, with tenfold heaviness, to the dust, which he degrades while he treads on it? But if, with the same influence, in the like critical juncture, he has done what he thought his duty to the republic, unawed by menace, and unseduced by blandishment, his homeward march will be a march of triumph; his constituents, as they come out to meet him, will exult at the "sound of his well-known voice;" and he will receive, at their hands, that reward which is beyond all the pride and power of office—the hearty welcome of the people who created, the people who sustain, the people who approve; of the people who send him back, with added confidence, to the service of his country.

Sir, I deny the power and the application of this whole argument of corruption. I will speak on this subject with perfect plainness. I care not what inference may be drawn from what I say. I say the Administration of this Government, at this time, is one, under which any honest man may take office. To the councils of the nation any man is free to go, with honor, who can contribute any thing to the administration of the public affairs: and, as a practical proof that this is so, I point to the honorable and honest men, men of all names and of all parties, who have taken office under the present administration—men who are as pure, and as free from suspicion, as any other men in this House, or out of this House, or in this country.

And, then, as to a coalition, on which the honorable gentleman from New York (Mr. CAMBRELENG) was so learned—of which he had such an abhorrence—an abhorrence which he endeavored to communicate to this House. Sir, the gentleman should be cautious in giving us his authorities for and against coalitions. If he arrays Obatham, Burke, and Fox, on one side, and Sheridan, (who, by the way, was in all the coalitions,) Mr. Moore, and even himself, on the other, the House may regard it as a case of the *malum errare*. I know not what standard the honorable gentleman may have fixed for himself, nor what point he hopes to reach, at the end of the long political journey which he considers to be before him. He will not be much to be commiserated, if, when he retires, it shall be



said of him, he was no more independent than O'Connell—no more pure than Burke—no more patriotic than Fox—their coalitions included.

Besides, sir, while the honorable gentleman was speaking with such severity of coalitions, did he not, in the same part of his argument—in the same breath, in which he denounced them, exult in the Union which was taking place in New York? The *Union*! What a beautiful, immaculate word! How that word flows, like honey, from the lips! The Union in New York! Of whom, and for what purposes? The gentleman says, "to enable New York to present an undivided front to the nation;" and this, too, in what the gentleman meant for an argument in favor of the district system. Sir, are there two rules of political morality? Does that gentleman say that it is corrupt for the administration of the Government to seek a union of councils, where there is no difference of principles, and not corrupt, but virtuous, that a union of councils should be sought against it?

The gentleman from South Carolina spoke of a Mosaic Cabinet. I will ask that gentleman if there is no such thing as a Mosaic opposition? The gentleman said, with great justice, as far as I know his history, that he had no reason to be ashamed of any political banner under which he had fought. But, if I mistake not the signs of the times; above all, if I understand this doctrine of political Mosaic, the time may soon come, when he will be not ashamed, certainly, but somewhat amused, to find with what banners he is fighting in conjunction. He will find himself in the position of some of those shrewd Ministers of France, who, while by one courier they sent aid to the Protestants in Germany, by another sent letters of arrest and dragonnade to the Protestants in France. The principle of union I take to be at least as good, on one side of the question, as on the other.

Sir, I shall intrude on the forbearance of this committee but a moment longer, exhausted as their patience must be, and my strength is. I listened to the honorable gentleman with alternate delight and thrilling horror; as, with such touching eloquence, he expounded to us the apologue of our frail first parents in the garden of Eden. When I found him going back to the primitive records of our race, and searching the pages of inspiration, to find the key to our political situation here; and when I saw him returning with the discovery, that the President of the United States was the devil; that the Senate were advising and consenting spirits of darkness; and the service of our beloved country, in the highest and most honorable trusts, the everlasting curse; I was almost ready to exclaim, under the excitement to which the honorable gentleman had wrought us all—

"O star-eyed science, hast thou wandered there,  
To bring us back the tidings of despair?"

Certainly, sir, if I had made this cheerful

discovery, I should not have brought it to the House, to be set forth in an elaborate argument. I should have packed up my trunk and stood ready for the convention bill to pass in Virginia, that I might have started with my good friend from that State (Mr. ALEXANDER) for the interior of Africa, or with "long suffering Captain Symmes," for the interior of the earth. But I read that interesting lesson, which, I allow, appears to have been dictated in reference to the Presidential election, with a different moral. Our first parents abode in ease and in peace; their action, like their being, was one. The ambitious tempter plotted against this harmony and concert. In despite of prevailing over their united strength, he sought to divide and conquer. He drew our frail mother to a solitary spot, to a lonely *belvedere*, in the garden. He talked to her of artful words, of amending her state; he had her exercise the right of acting for herself; he flattered her wisdom, her vanity, her love of power. Had she remained by her partner's side, this eloquence had been vain; but bereaved of his counsel, separated from his presence, with no arm to support, no eye to witness—

"—— Her rash hand in evil hour  
Forth reaching to the fruit, she plucked, she ate:  
Earth felt the wound; and Nature from her seat  
Sighing through all her works, gave signs of woe,  
That all was lost."——

Ay, sir, that all was lost. And let the States that now compose this happy Union, misled by the eloquence of the honorable gentleman, contract the habit of tampering with the constitution; let them, in the excitement of an election passed, or of an election to come, disturb the curious, that happy adjustment of power, which is now our life and our peace, and all will be lost for them. Sir, let the people of this country believe what the gentleman has so earnestly told them, of the corruptibility of the House, of their representatives, and I say not all *will* be lost, but that all *is* lost, irretrievably—totally—forever.

But such, I thank Heaven, is not my opinion—all is not lost—all is safe—very safe. The country stands at this moment in that position firm and erect, in which Providence intended that it should stand: at home, a model of a wise and prosperous administration of domestic affairs; abroad, an exemplar to the discouraged nations of that long desired union of liberty and law. Sir, if I held the opinions to which I allude—which I hope, on mature reflection, the gentleman from South Carolina himself will reverse—I say sincerely, I would not come here to proclaim them. Here they can do no good; the hour is gone by; the battle is fought and lost. But I would go with them to England, and I would there sound them in the ears of the reformers, so called; that poor deluded company; who, without leaders, without counsel, are following the phantom of reform through the dark paths of treason and

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*Asylum for the Deaf and Dumb in Kentucky.*

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assassination to the scaffold. I would fly with them to the continent of Europe, and see if I could there do nothing to repress the movements of revolution, ready to break out in that fair quarter of the globe, in pursuit of the same delusive good, proved by the failure of our experiment in this favored land, to be thus delusive. I would go with my doctrines to Turkey, and there strive to nerve the arm of the Sultan, that he might drive the steel still deeper into the bleeding heart of mangled Greece, fighting for the same insulting mockery of freedom for which we fought, and, at best, for the same treacherous and short-lived success. Then, sir, if I could find on the face of the earth one mild, parental, beneficent despot, who loves his people as his children, I would go and lay my forehead on his footstool, and beg him to set his foot on my head, as a recreant citizen of a recreant Republic. If I could not find such a living monarch, in weeds of deepest sable, I would join that mournful procession, that spectacle, perhaps never before witnessed on earth, the funeral convoy of the nations, which even now, while I utter the words, is following the kind and departed arbiter of life and death of fifty millions, from province to province—from mourning Asia to mourning Europe.

FRIDAY, March 10.

*Deaf and Dumb Asylum in Kentucky.*

Mr. T. P. MOORE, of Kentucky, moved to postpone all the orders of the day before the bill "for the benefit of the Asylum for teaching the Deaf and Dumb of Kentucky," and the bill was taken up, in Committee of the Whole:

The bill having been read, Mr. MOORE addressed the committee as follows:

Mr. Chairman: In recommending to the committee the bill for the benefit of the asylum for teaching the deaf and dumb in Kentucky—in urging a measure which will effectually extend the patronage of the nation to that benevolent institution—I am sensible that I present a subject not calculated to kindle the zeal of politicians, nor in any manner to rouse their stormy feelings which serve to augment the force of declamation, and to deepen and prolong the course of debate.

It is not a proposition to erect a fortification, or to construct a canal: to lavish millions in removing mountains from the land, or up-rearing towers in the sea; to push discoveries through the ices of the poles, or form alliances on the verge of the equator. No, Mr. Chairman; the cup that I present to the lips of the committee contains a draught of pure benevolence; no poisonous drug lurks at its bottom; no dangerous spirit sparkles on its top. It is innocent and salubrious, and wherever there is a taste for justice and humanity, it must be palatable.

It is now an axiom amongst all reflecting

men, that the diffusion of knowledge is the surest support, as well as the highest duty, of good Government; and it is a maxim, I believe, among American statesmen, that, as our Government is thoroughly popular and representative, the universal education of its citizens is essential to its perfection and stability. The justice of this position cannot be disputed, nor can its application to the interest of that afflicted portion of the community in whose behalf I appeal be denied. They have a claim of right upon their fellow-citizens to be elevated to the rank of intellectual beings; to find their proper place upon the scale of society; to enter into the world of thoughts and reflection; to have their capacities invigorated; their passions impelled; to be enabled to sympathize with their fellow creatures; to love their country; to adore their God; and to share in all the varieties of suffering and beatitude of which human destiny is composed. It would be neither equitable nor politic, I apprehend, to confine the blessings of education to youths of the highest promise. The sum of knowledge, like the great lamp of Heaven, while it shines on the mountains, must pour its beams into the lowest valleys. The whole surface of national intellect is to be visited by light; and if the reflection of man is to imitate the wisdom of his Creator, the gloom of humility and misfortune should not be permitted to obstruct the penetration of its genial influences. These general remarks, I indulge the hope, will dispose the committee to consider that the public patronage, and private beneficence, of Kentucky, which have been so long, and so liberally exerted in this interesting service of humanity, should no longer remain without their encouragement and assistance. The means derived from these sources have been employed (as will be rendered apparent by a perusal of the documents connected with this application, all of which have been printed and placed on each member's table) to the very best advantage in the establishment and conduct of the Asylum at Danville.

In the year 1822, the Legislature of Kentucky incorporated and endowed the asylum for teaching the deaf and dumb, and located it at Danville, a central point in the State, combining as many general and local advantages for the site of such an institution, as any spot which could have been selected in the western country. They threw open its doors to the whole deaf and dumb population of the adjacent States, and placed it under the control of a superintending committee, who have employed competent teachers, purchased ground, buildings, &c., and whose vigilant and enlightened devotion to the interests of the institution have been demonstrated by the rapid progress of the pupils confided to their care. The judicious management of the asylum has led to a constant increase of its numbers; but this philanthropic institution is without adequate means to sustain an augmentation of its

numbers. It has struggled on to this time by the aid of private charity, and the endowments made by Kentucky; but it would be improper to conceal the fact, that the Legislature cannot afford further assistance. The people of Kentucky have done much for the cause of literature and humanity—they are generous—their soil is rich—but they are remote from market, and their moneyed concerns embarrassed—and it cannot be denied that the various States, and the entire population of the Valley of the Mississippi, are dependent on this single institution for the means of this particular instruction; and in its present condition it cannot completely answer the wants of Kentucky. Experience has proven, both in Europe and America, that the instruction of the deaf and dumb can only be usefully and successfully imparted, in institutions regularly established, and superintended by competent teachers. The estimates which have been made in Europe and America lead to the conclusion, that in any given mass of population, one out of every two thousand is deaf and dumb; and it may therefore be fairly inferred, that unless the asylum at Danville is enlarged, about one thousand of our fellow-citizens now living must pass from youth to death in a state of torpor and ignorance. Let gentlemen who are not alive to the importance of the subject, conceive this number of unfortunate wretches collected. This misery amassed, these specimens of misfortunes assembled together, could any exhibition of human degradation exceed it in horror? Does not the mind shrink and startle at the very conception? And does the conception surpass the reality? The diffusion of this calamity, though it may conceal, does not diminish it. It is immeasurable, indescribable, and cannot be exaggerated by fancy or equalled by fiction. To remove all this distress, and to furnish the means of preventing it in all time to come, will require of Congress but a small expense of thought, and a few acres of land. An appropriation which would hardly suffice to complete the capital of a Corinthian column, will effect this great purpose of wisdom. The expense of *that* clock to count the fleeting hours of the day, will erect this lasting monument of philanthropy. Nay, sir, the money expended on the frivolous embellishment connected with it, graven upon inanimate stone, will kindle into thought and awake to rapture, thousands of spell-bound and inert intelligences. I cannot believe that this useful bounty will be withheld, especially as the asylum of Connecticut received a donation from Congress in the year 1819, of a township of land, from which it has derived a handsome revenue, and has been rendered permanently useful, and which sanctions by precedent this application. But, Mr. Chairman, the bill on your table is freed from all the objections which have been urged against the appropriation to the Connecticut Asylum; it is restricted to the location of the land in one tract, and it

is designed for the benefit of the indigent deaf and dumb. It is to alleviate the sad condition of that class of our fellow-creatures, whose betterment is a part of the vast machinery of eternal wisdom. To reclaim from native desertion their rich, though hidden faculties, and, by uniting the virtues of earth with the omnipotence of Heaven, to constitute man a fellow-laborer with the Deity himself, in the delightful office of ennobling humanity. The heart, at best, is but, seldom a fit lawgiver; yet, in such a cause as this, its impulses may be safely trusted: for it is the cause of oppressed and suffering indigence, and it appeals with cheering hope to those generous sympathies with which, on this floor, it needs no advocate. It may not, Mr. Chairman, be improper to add, that we of the West, with a liberal spirit, have voted thousands annually to erect light-houses, clear beaches, &c., on the Atlantic frontier, which, although some of them are national in their character, and indirectly beneficial to us, yet it will not be denied, that by furnishing profitable employment to the crews on the sea-board, it diffused comfort and happiness, and that appropriations from the public treasury fall light and seldom upon the West.

But I will not so far undervalue the force of the subject, or underrate the wisdom, humanity, and intelligence, of the committee, as to believe they will reject the bill, which a chairman of the committee, I have been instructed to report. Memorials from the Asylums of New York and Pennsylvania have been referred to the committee, no doubt for the purpose of offering amendments to the bill. Although I should be deeply mortified at the failure of the bill for the benefit of the Kentucky asylum, and would feel under many obligations to the gentlemen having charge of the New York and Pennsylvania memorials, if they would not encumber this bill with amendments; yet, if they should deem it their duty, I cannot vote against them, because I am persuaded Congress could not make a more beneficial appropriation to any object.

Mr. CONDICT moved to amend the bill, by inserting in it a provision for the benefit of the incorporated asylum of New Jersey.

Mr. C. said that he made this motion in pursuance of a joint resolution of the two Houses of the New Jersey Legislature; but, as the nature of the subject was obvious, and familiarly known, he forebore to offer any remarks in support of the motion.

Mr. BUCHANAN thought, from the statement of the gentleman from Kentucky, there could hardly be a doubt as to the propriety and humanity of following the precedent set, in giving a township of land to the asylum for the deaf and dumb in Connecticut. At the proper time, he should agree to the proposition of his friend from New Jersey, but at present he considered the cases quite different. This application had been before the House for three sessions; it had been referred to a committee.

MARCH, 1826.]

*Asylum for the Deaf and Dumb in Kentucky.*

[H. OF R.]

and that committee had made two reports; and this asylum at Danville has been in successful operation for several years. He trusted this bill would pass on its own merits. The State he represented, Mr. B. said, had also a similar asylum, but, for his part, he did not feel it his duty to embarrass the progress of this bill, by offering an amendment in favor of that asylum, though he knew it to be in successful operation.

Mr. MALLARY said, it was sometimes the practice to embarrass the progress of a bill, by offering an amendment, entirely differing in its object, though he could not believe the gentleman had that object in view, in the present instance. He could not ask for New Jersey what he would be unwilling to give to Kentucky. He presumed the gentleman was favorable to the principle of the bill, but he thought there was no necessity for the gentleman from New Jersey to press his claims in behalf of his State, as it had a tendency to embarrass the passage of the bill. It would be best to present it, meritorious as it was, disconnected with that of any other State.

Mr. CAMBRELENG said he thought it right to state, that he had intended to have offered an amendment to this bill, embracing two institutions, in favor of which a bill was introduced last session of Congress; but not wishing to embarrass the bill, in which he took great interest, he did not do so. Petitions from New York and Pennsylvania, on the subject, were now lying on the table; and after the bill got into the House, he should move that both these petitions be referred to a select committee, that their merits might be examined. He hoped, therefore, the gentleman from New Jersey would withdraw his motion, and refer it to the same committee.

Mr. WYERS said, a memorial had been presented during the present session, in behalf of the institution established in Pennsylvania, for the deaf and dumb, and he had prepared an amendment to include that institution; and he believed he could show, if an appropriation was made anywhere for such a purpose, it should be made there also; but, in accordance

with the views entertained by the gentleman from New York, he should not offer it. He believed, with the gentleman from Kentucky, that they could not make an appropriation for an object which was more valuable than the one now under consideration. He did not say this lightly, having been a director of an institution of this kind for some time, and being well convinced of the benefits which flowed from it. He should vote for the bill without amendment, under the conviction that this House would do, in other parts of the Union, that which it had done in the eastern States, and which he hoped it would do, in the valleys of the Mississippi.

The amendment was rejected.

Mr. VINTON moved the following amendment, viz: to strike out the words "or a tract of land equal thereto;" which was agreed to.

Mr. THOMPSON, of Ohio, moved further to amend the bill, so as to except from the grant of land section number 16; which was also agreed to.

Mr. McCOR said he did not know where this township was to be taken from. A good portion of the land which the United States pretend to claim, was ceded for special purposes, to pay the debts of the nation. He recollected, some few years ago, this House did, in one of their fits of humanity, grant to the asylum in Connecticut a township of land. They were immediately after applied to by the State of New York, and next session, the House took a stand, and refused to grant it, and now New Jersey, and Pennsylvania, and New York, are all prepared again each to ask for a township of land. This House was gathering up a kind of legislation it would be impossible for them to get along with, and soon the people of this country would be unable to build a school-house, unless this Government gave them the money. He should forbear making any more comments on the bill—he was opposed to it, although he supposed it would pass, as it seemed to be a favorite.

The bill was then ordered to be engrossed, and read a third time to-morrow.

The House adjourned.

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